TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 276. 44. A. 3 1.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK AND JAMES A. GALLAGHER, APPELLANTS,

vs.

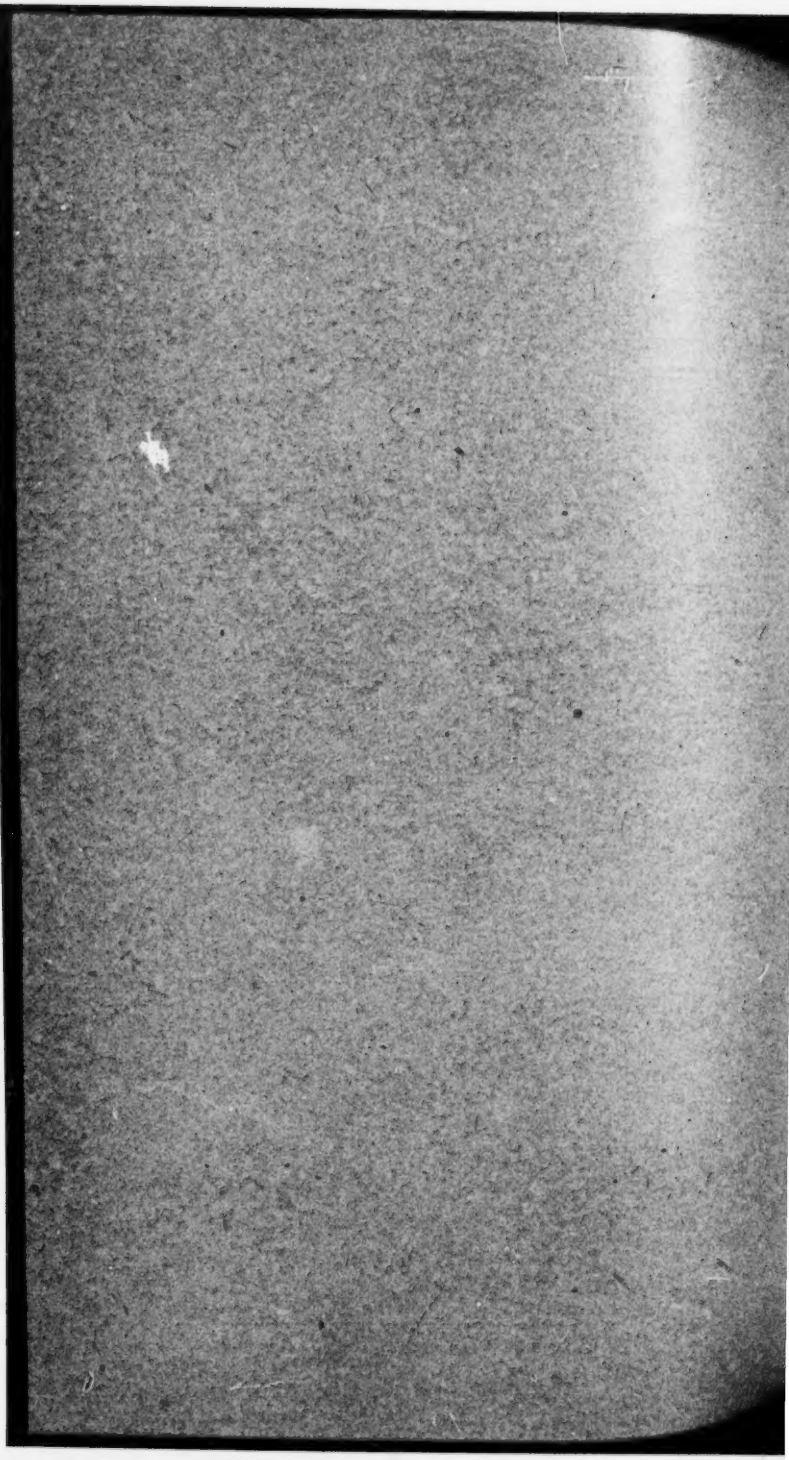
ROBERT W. WORKMAN.

A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FILED MAY 29, 1896.

CERTIORARI AND RETURN FILED JUNE 1, 1896.

(15,906.)



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1 U. S. District Court, Southern District of New York.

ROBERT W. WORKMAN, Libellant and Appellee,
against
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW York and James A. Gallagher, Respondents and Appellants, Impleaded with The Fire Department of the City of New York.

Statement.

1893, July 27. Libel filed.
Aug. 8. Answer, Mayor, &c., filed.
Nov. 8. Order to show cause why libel should not be amended granted.
9. Motion to amend libel argued.
10. Opinion, Brown, J., on motion to amend libel.
15. Order granting motion to amend libel entered.
Dec. 1. Amended libel filed.
12. Answer of respondent Gallagher filed.
12. Exceptions to libel filed by Fire Department.
19. Exceptions to libel filed by Fire Department argued.
27. Order sustaining exceptions filed.

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1894, Jan'y 2. Amendment to amended libel filed.
18. Answer of Fire Department filed.
April 9. } Cause tried before Hon. Addison Brown, U. S.
10. } district judge.
Aug. 15. Opinion rendered by Brown, J., awarding libellant a decree against the Mayor, Aldermen, &c., of New York and James A. Gallagher.
30. Final decree entered.
Sept. 6. Notice of appeal (Mayor, &c.) filed.
14. Assignment of errors (do.) do.
6. Notice of appeal (Gallagher) do.
12. Assignment of errors (do.) do.

3 To the Honorable Addison Brown, judge of the district court of the United States for the southern district of New York:

The libel of Robert W. Workman, of Belfast, Ireland, owner of the barkentine *Linda Park*, her tackle, apparel, &c., against the Mayor, Aldermen and Commonalty of the City of New York, owners of the steam fireboat *New Yorker*, in a cause of action, civil and maritime, for collision and damages, alleges as follows:

First. That at the times hereinafter mentioned the libelant was and is now a resident of Belfast, Ireland, and the owner of the barkentine *Linda Park*, her tackle, apparel, &c., which is an iron vessel of 324 tons register and a first-class vessel in every respect.

Second. That said Mayor, Aldermen and Commonalty of the City

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of New York at the times hereinafter mentioned were and now are a municipal corporation, duly incorporated, organized and existing under the laws of the State of New York, and were the owners of the steam fireboat *New Yorker* hereinafter referred to, which at the times hereinafter mentioned was officered and manned and navigated by the servants, agents and employees of said corporation.

Third. That on Sunday, the 11th day of June, in the year 1893, the said barkentine *Linda Park* was lying with a full cargo on board and ready for sea safely moored alongside of the pier or dock at the foot of Clinton street, East river, known as pier 48, in said city of New York, where she had a perfect right to be. That the barkentine laid on the east side of said pier. A schooner laid ahead of her on the same side of the pier and a barge laid along the port side of the said barkentine. That the weather was fine, the wind easterly, blowing a moderate breeze, and the tide was running flood. About 4.30 p. m. on that day a fire broke out in one of the warehouses across the street from said slip, and soon the fire-engines appeared and the fireboat *William Havemeyer* came into the said slip
4 between the said barge and the next pier to the eastward and commenced playing on the fire. That she was soon followed by the fireboat *New Yorker*. The said fireboat *New Yorker*, instead of going straight into the slip, came from the eastward in a crosswise direction into said slip and ran with great force and violence her bow underneath the bowsprit of said barkentine, prying the same up and carrying away all the headgear, bobstays, martingale, bowsprit, shrouds and gear attached thereto, and breaking a steel hawser and doing other considerable damage, and bringing up at last against the pier, which the barkentine was lying alongside of, with a heavy blow, which left the mark of her stem on the said pier. That the said fireboat immediately backed out into the river again and then came straight forward into the slip, as she should have done in the first place, and went alongside the fireboat *William Havemeyer* and commenced playing on the fire. That the said barkentine was remoored again at her bow alongside said pier, and soon the captain of the fireboat *New Yorker* came on board of the barkentine. He informed the officer in charge of said barkentine that it was not his, the captain's, fault, but it was the fault of the engineer of the fireboat, for he said that he gave the engineer the proper bells to stop the boat, but that he did not obey them, and that the city was responsible for the damages done to said barkentine, and that if the same were presented they would be paid.

Fourth. That said collision was without any fault or negligence on the part of the libelant or those in charge of his said barkentine, but was wholly due to the fault and negligence of those in charge of the steam fireboat *New Yorker*:

1. In that they had no proper and sufficient lookout, properly stationed, in the faithful discharge of his duties.

2. In that they failed to keep out of the way of the libelant's said barkentine, but ran directly into the same, doing the damage before alleged.

5 3. In that said steam fireboat *New Yorker*, when she found that she was going to run into said barkentine, did not stop and back and try to avoid the same.

4. In not being properly officered and manned, and in not having a competent engineer in charge of her engine, to promptly give heed to the orders given and to execute the same.

5. And in other respects, which the libelant will show on the trial of this action.

Fifth. That by reason of said collision the libelant has sustained damages in the sum of $908.48 for the repairs to said barkentine and the delay and expenses incident thereto.

Sixth. That on the 23d day of June, 1893, the libelant duly presented his claim as above set forth to the comptroller of the city of New York for adjustment in the manner prescribed by the statutes in such case made and provided. That more than 30 days have elapsed since such presentment, and said comptroller has neglected and refused to make an adjustment thereof for 30 days after such presentment, and the same has not been adjusted or paid.

Seventh. All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore, the libelant prays that process in due form of law and according to the rules and practice of this court in cases of admiralty and maritime jurisdiction may issue against the said respondent, owner of the said steam fireboat *New Yorker*, her engines, boilers, etc., and that it may be directed to pay to the libelant the claim of libelant aforesaid, amounting in all to $908.48, with interest thereon and the costs of this action, and that he may have such other and further relief as in law and justice he may be entitled to receive.

ROBERT W. WORKMAN,
By WING, SHOUDY & PUTNAM, *Proctors.*

6 SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss:

Joseph A. Shoudy, being duly sworn, says: That he is one of the proctors for the libelant in the above-entitled suit; that he has read the foregoing libel and believes the same to be true; that the grounds of his belief are from interviews had respecting the said collision and examination of documents in reference to the repairs of the said barkentine; that the reason why this verification is made by deponent and not by the libelant, is that the libelant is a non-resident and is not now within the United States.

J. A. SHOUDY.

Sworn to before me this 26th day of July, 1893.

JAMES FORRESTER,
[SEAL.] *Notary Public, Kings Co.*

Cert. N. Y. Co.

WING, SHOUDY & PUTNAM,
Proctors for Libelant.

(Endorsed:) Libel. Filed July 27, 1893.

7 To the Honorable Addison Brown, judge of the district court of the United States for the southern district of New York:

The answer of the Mayor, Aldermen and Commonalty of the City of New York to the libel of Robert W. Workman alleges as follows and respectfully shows to the court:

First. The respondent denies that it has any knowledge or information sufficient to form a belief as to any of the allegations in the first article of the libel herein contained.

Second. The respondent admits that at the times in the said libel mentioned it was, and still is, a municipal corporation created and existing under and by virtue of the provisions of its ancient charters and the laws of the State of New York, and that it was the owner of a certain steam fireboat, the *New Yorker*, as in the second article of the libel herein alleged.

It denies that the said steamboat *New Yorker* was at the times in the said libel mentioned officered, managed and navigated by the servants, agents, and employees of the respondent, as in the second article of the said libel alleged, but on the contrary avers that the said steam fireboat *New Yorker*, although owned by the respondent, was not at any of the times mentioned in said libel under respondent's control or management, it being under the exclusive direction and in the keeping and custody of the board of fire commissioners of the city of New York, and used solely in and about the business of the said commissioners in the discharge of their official functions in virtue of the provisions of the statute in such case made and provided, to wit, by section 424 of chapter 410 of the Laws of 1882 and the acts amendatory thereof. And respondent avers that it is, among other things, provided by statute, to wit, by section 428 of chapter 410 of the Laws of 1882 and the several acts amend-

8 atory thereof, that the said board, to wit, the board of fire commissioners, shall have power to select the heads of bureaus and assistants and as many officers and firemen as may be necessary, and the same shall at all times be under the control of the said board, and perform such duties as may be assigned to them by the said commissioners. That the said fireboat *New Yorker* was at all of the times in said libel mentioned officered, manned and navigated by persons selected by the said board of fire commissioners, and at the times in said libel mentioned wholly under the control of the said board, and engaged in the performance of such duties as had been assigned to them by the said fire commissioners.

Third. On information and belief, the respondent denies all of the allegations except as hereinafter admitted in the third article of the said libel contained.

Fourth. On information and belief, the respondent denies all of the allegations contained in the fourth article of the libel herein.

Fifth. On information and belief, the respondent denies that the libelant has sustained damages in the sum of $908.48, as in the fifth article of the libel herein alleged, but the respondent avers, on information and belief, that the said damage, if any, was for a much less sum.

Sixth. The respondent admits that on or about the 23d day of June, 1893, the libelant presented to the comptroller of the city of New York a claim for the amount in the said libel stated, and that more than thirty days have elapsed since said claim was presented, and that no adjustment thereof has been made, as in the sixth article of the libel herein alleged, but the respondent avers that while, as provided by statute, to wit, by section 123 of chapter 410 of the Laws of 1882, after the presentation of the said claim as aforesaid, the comptroller did require the person presenting said claim to be sworn before him touching said account or claim, and when
9 so sworn to answer orally as to any facts relative to the justness of such account or claim, and fixed a day certain for the appearance and examination touching the said claim of the person presenting the same, that nevertheless the libelant herein, or the person presenting the claim, acting in his behalf, failed and neglected and refused to appear to be sworn and examined as required by law, at the time designated by the comptroller of the city of New York.

Seventh. The respondent admits the jurisdiction, but denies, on information and belief, all of the other allegations in the seventh article of the libel herein contained.

Eighth. And for further answer to the libel herein and touching the said collision therein complained of, on information and belief, the respondent avers the truth to be that on or about the 11th day of June last, the fireboat *New Yorker*, between four and half past four in the afternoon of that day, being called thereto by telegraphic signal, left the place where she was moored, to wit, at the foot of Castle Garden, in the North river, and properly officered, manned and appointed, and in charge of a skillful pilot, who was at all the times hereinafter mentioned at the wheel and diligently engaged in attending to his duties, proceeded around the Battery and up the East river, and in order safely to enter the slip between pier 48 and pier 49, in the East river, and reach the bulkhead to attach her hose, observing when she reached a point to the south of pier 48, that the fireboat *Havemeyer* lay along the end of pier 48, manœuvering to effect her entrance into the slip, and that along the northerly side of pier 48 was lying, from the bulkhead out, a barkentine, and from the end of the pier line, heading in towards the bulkhead, a schooner, occupying some 20 or 30 feet of the open water between the said two piers, 48 and 49, and from the pier line, in along the southerly side of pier 49, lay a railroad float, occupying some 35 or 40 feet
10 of the open water between the said two piers, and it being the duty of the fireboat *New Yorker* to proceed with all possible dispatch into said slip, and up to the bulkhead lying between said piers 48 and 49, the pilot in charge of and navigating the fireboat *New Yorker*, heading out a sufficient distance into the East river, proceeded up to a point above pier 49 and then headed down, so as to make the open water between the said piers 48 and 49; and, with the tide running as it was, was compelled, in order to avoid a collision with the railroad float, lying along the southerly side of pier 49 to proceed at a moderate rate of speed into the said slip, in order

to keep said fireboat under control, and make his proper connections at the bulkhead.

That owing to the crowded condition of the slip and to the state of the tide and the necessity of making the slip under certain headway, the said fireboat *New Yorker*, without any fault on the part of those in charge of and navigating the said boat, came into collision with a barkentine lying along the northerly side of said pier 48, which your respondent, on information and belief, admits to have been the barkentine *Linda Park*.

And on information and belief respondent avers that the said collision and any subsequent damage resulting therefrom were not caused or contributed to by any fault or negligence on the part of the steam fireboat *New Yorker* or of the persons in charge of and navigating her, but that the said collision was unavoidable on her part.

Wherefore respondent prays that the libel be dismissed with costs.

WILLIAM H. CLARK,
Counsel to the Corporation, Proctor for Respondent.

JAMES M. WARD, *Of Counsel.*

11 CITY AND COUNTY OF NEW YORK, *ss:*

Richard A. Storrs, being duly sworn, deposes and says that he is an officer of the above-named respondent, The Mayor, Aldermen and Commonalty of the City of New York, to wit, deputy comptroller thereof. That he has read the foregoing answer and knows the contents thereof, and the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason why this verification is not made by the said respondent is that the respondent is a corporation.

Deponent further says that the knowledge of the matters and things set forth in the said answer is derived from various records of the said corporation and from statements made to him by officers and employees of the said corporation and of the fire department of the city of New York.

RICHARD A. STORRS.

Sworn to before me this 8th day of August, 1893.

WM. H. CLARK,
Notary Public.

(Endorsed:) Answer. Filed Aug. 8, 1893.

12 U. S. District Court, Southern District of New York.

ROBERT W. WORKMAN
vs.
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK.

On the annexed affidavit and all proceedings herein, it is—

Ordered, that the respondent herein show cause before me, at

the court-rooms, post-office building, in the city of New York, on the 9th day of November, 1893, at 11 o'clock in the forenoon of that day, why the libel herein should not be amended as prayed for, by making the board of fire commissioners of the city of New York and the captain of the fireboat *New Yorker* parties defendant herein.

And it is further ordered, that the service of a copy of this order on the respondent's attorneys, at or before 5 p. m. on the 8th day of November, 1893, will be sufficient.

ADDISON BROWN.

13 U. S. District Court, Southern District of New York.

ROBERT W. WORKMAN, Libelant,
vs.
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Henry T. Wing, being duly sworn, says that he is one of the proctors for the libelant in the above-entitled action. That this action was brought on or about the 26th day of July, 1893, by the filing of a libel on behalf of the above-named libelant as owner of the barkentine *Linda Park* against the Mayor, Aldermen and Commonalty of the City of New York, as owner of the steam fireboat *New Yorker*, to recover the sum of $903.43 for damages sustained by said barkentine in being carelessly and negligently run into by said fireboat on the 11th day of June, 1893, while the said barkentine was lying with a full cargo on board and ready for sea, safely moored alongside of the pier or dock at the foot of Clinton street, East river, in the city of New York. That the facts in regard to said collision are set forth in said libel and in the depositions taken in support of said claim, of Peter Brown, 1st officer; George Parkerson, 2d officer, and Thomas Skinner, the captain of said barkentine.

That the answer to said libel was filed on or about the 8th day of August last, and admits that the said steam fireboat *New Yorker* at the time of said collision was owned by the Mayor, Aldermen and Commonalty of the City of New York, but denies that it was under its control or management. and expressly alleges that it was
14 under the exclusive direction and in the keeping and custody of the board of fire commissioners of the city of New York, and used solely in and about the business of the said commissioners in the discharge of their official functions, and that the said fireboat was at all the times in said libel mentioned officered, manned and navigated by persons selected by the said board of fire commissioners, and at the times in said libel mentioned wholly under the control of the said board and engaged in the performance of such duties as had been assigned to them by the said fire commissioners. That if the foregoing allegations of the answer be true, deponent verily believes that the said board of fire commissioners, as well as the captain of said fireboat *New Yorker* should be made parties respond-

ent to this suit in order that the court may have all the parties before it to make a proper disposition of the case. And this deponent therefore asks this honorable court for leave to join the said board of fire commissioners and the master of said fireboat *New Yorker* as respondents in this suit.

HENRY T. WING.

Sworn to before me this 8th day of November, 1893.

JAMES FORRESTER,
Notary Public, Kings County.

[SEAL.]

Cert. N. Y. Co.

(Endorsed:) Affidavit & order to show cause. Filed Nov. 15, 1894.

15 United States District Court, Southern District of New York.

ROBERT W. WORKMAN
vs.
THE MAYOR, ALDERMEN, ETC., OF NEW YORK.

Wing, Shoudy & Putnam, for libellant.
William H. Clark (Mr. Ward), for respondents.

BROWN, *J.*:

The authorities cited in the defendant's brief make it apparently very doubtful whether the libellant can recover against the city for the faults of the fire department, however clear the fault of the *New Yorker* may be. Under such circumstances, in the interests of justice, the court is bound to grant all the facilities within its power to reach those who are legally liable. The introduction of the additional defendants by amendment cannot do any substantial prejudice to the defendant, nor subject it to any more inconvenience than is incident to ordinary cases in which additional defendants are introduced under the 59th rule of the supreme court in admiralty. Without intimating any opinion as regards the responsibility of any or all of the parties named, the motion to amend should be granted.

Nov. 10, 1893.

A. B.

16 At a stated term of the district court of the United States for the southern district of New York, held at the U. S. court-rooms, in the city of New York, on the 14th day of November, 1893.

Present: Hon. Addison Brown, judge.

ROBERT W. WORKMAN
against
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK.

An order to show cause having been heretofore granted herein why the libel should not be amended by making the board of fire

commissioners of the city of New York and the captain of the fireboat *New Yorker* parties defendant herein, and the motion thereon having been argued by Harrington Putnam, Esq., for the libellant, and James M. Ward, Esq., for the respondent, and due deliberation having been had, now, on motion of Wing, Shoudy & Putnam, proctors for libellant, it is—

Ordered, that the motion be and the same hereby is granted, and that the libellant herein have leave to file an amended libel herein, making the board of fire commissioners of the city of New York and the captain of the fireboat *New Yorker* parties defendant herein, without further stipulation for costs on either side.

ADDISON BROWN.

(Endorsed:) Order. Filed Nov. 15, 1893.

17 To the Honorable Addison Brown, judge of the district court of the United States for the southern district of New York:

The amended libel of Robert W. Workman, of Belfast, Ireland, owner of the barkentine *Linda Park*, her tackle, apparel, etc., against the Mayor, Aldermen and Commonalty of the City of New York, the Fire Department of the City of New York, and James A. Gallagher, in a cause of action, civil and maritime, for collision and damage, alleges as follows:

First. That at the times hereinafter mentioned the libellant was and is now a resident of Belfast, Ireland, and the owner of the barkentine *Linda Park*, her tackle, apparel, etc., which is an iron vessel of 324 tons register and a first-class vessel in every respect.

Second. That said Mayor, Aldermen and Commonalty of the City of New York at the times hereinafter mentioned were and now are a municipal corporation, duly incorporated, organized and existing under the laws of the State of New York, and were the owners of the steam fireboat *New Yorker* hereinafter referred to. That at such times the respondent, The Fire Department of the City of New York, had the custody, control and management of said fireboat *New Yorker*, and the respondent Gallagher was the acting master of said fireboat.

Third. That on Sunday, the 11th day of June, in the year 1893, the said barkentine *Linda Park* was lying with a full cargo on board and ready for sea safely moored alongside of the pier or dock at the foot of Clinton street, East river, known as pier 48, in said city of New York, where she had a perfect right to be. That the barkentine laid on the east side of said pier. A schooner laid ahead of her on the same side of the pier and a barge laid along the port side of the said barkentine. That the weather was fine, the wind easterly, blowing a moderate breeze, and the tide was running flood. About 4.30 p. m. on that day a fire broke out in one of the warehouses across the street from said slip, and soon the fire-engines appeared and the fireboat *William Havemeyer* came into the said slip,
18 between the said barge and the next pier to the eastward and commenced playing on the fire. That she was soon followed by the fireboat *New Yorker*. The said fireboat *New Yorker*, instead

of going straight into the slip, came from the eastward in a crosswise direction into said slip and ran with great force and violence her bow underneath the bowsprit of said barkentine, prying the same up and carrying away all the headgear, bobstays, martingale, bowsprit shrouds and gear attached thereto, and breaking a steel hawser and doing other considerable damage, and bringing up at last against the pier, which the barkentine was lying alongside of, with a heavy blow, which left the mark of her stem on the said pier. That the said fireboat immediately backed out into the river again and then came straight forward into the slip, as she should have done in the first place, and went alongside the fireboat *William Havemeyer* and commenced playing on the fire. That the said barkentine was remoored again at her bow alongside said pier, and soon the captain of the fireboat *New Yorker* came on board of the barkentine. He informed the officer in charge of said barkentine that it was not his, the captain's, fault, but it was the fault of the engineer of the fireboat, for he said that he gave the engineer the proper bells to stop the boat, but that he did not obey them, and that the city was responsible for the damages done to said barkentine, and that if the same were presented they would be paid.

Fourth. That said collision was without any fault or negligence on the part of the libellant or those in charge of his said barkentine, but was wholly due to the fault and negligence of those in charge of the steam fireboat *New Yorker:*

1. In that they had no proper and sufficient lookout, properly stationed, in the faithful discharge of his duties.

19 2. In that they failed to keep out of the way of the libellant's said barkentine, but ran directly into the same, doing the damage before alleged.

3. In that said steam fireboat *New Yorker* when she found that she was going to run into said barkentine did not stop and back and try to avoid the same.

4. In not being properly officered and manned, and in not having a competent engineer in charge of her engine to promptly give heed to the orders given and to execute the same.

5. And in other respects, which the libelant will show on the trial of this action.

Fifth. That by reason of said collision the libelant has sustained damages in the sum of $908.48 for the repairs to said barkentine and the delay and expenses incident thereto.

Sixth. That on the 23rd day of June, 1893, the libelant duly presented his claim as above set forth to the comptroller of the city of New York for adjustment in the manner prescribed by the statutes in such case made and provided. That more than 30 days have elapsed since such presentment, and said comptroller has neglected and refused to make an adjustment thereof for 30 days after such presentment, and the same has not been adjusted or paid.

Seventh. All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellant prays that process in due form of law and according to the rules and practice of this court in cases of admiralty

and maritime jurisdiction may issue, citing the respondents above named to appear and answer the matters aforesaid, and that this court will decree to the libelant as against the respondent's payment of the claim of libelant aforesaid, amounting in all to $908.48,
20 with interest thereon and the costs of this action, and that he may have such other and further relief as in law and justice he may be entitled to receive.

ROBERT W. WORKMAN,
By WING, SHOUDY & PUTNAM, *Proctors.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Henry T. Wing, being duly sworn, says:
I am one of the proctors of the libelant herein, who is now absent from this district and from the United States. I have read the foregoing amended libel, and the same is true to the best of my knowledge; deponent's knowledge is derived from interviews with the master of the *Linda Park* and examination of documents in connection with the matters herein set forth.

HENRY T. WING.

Sworn to before me this 29th day of November, 1893.
JAMES FORRESTER,
[SEAL.] *Notary Public, Kings Co.*
Cert. N. Y. Co.

WING, SHOUDY & PUTNAM,
Proctors for Libelant.

(Endorsed:) Amended libel. Filed Dec. 1, 1893.

21 United States District Court, Southern District of New York.

ROBERT W. WORKMAN, Libellant,
against
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF New York, The Fire Department of the City of New York, and James A. Gallagher, Respondents.

CITY AND COUNTY OF NEW YORK, *ss:*

James A. Gallagher, being duly sworn, deposes and says: That the libelant herein, as he is informed and believes, originally filed a libel against The Mayor, Aldermen and Commonalty of the City of New York, to recover damages in a cause of action, civil and maritime, for alleged injury to the barkentine *Linda Park*, done by the steam fireboat *New Yorker*, on or about the 11th day of June, 1893.

That, by order of this court, the libelant was permitted to amend his libel by bringing in as parties respondent to the said libel both the Fire Department of the City of New York and deponent, who was the pilot in charge of the fireboat *New Yorker* at the time of the said collision.

Deponent further says, that he has stated the facts in this case to his counsel, and is advised by him and verily believes that he has a good defense upon the merits.

Deponent further says that he resides in the city of New
22 York, at No. 305 West 29th street, and is employed as pilot on board the fireboat *New Yorker*, and that he is a citizen of the United States.

And deponent further says that, because of his poverty, he is unable to file the usual security for costs, which he is informed and believes is, as a rule, required upon the filing of any answer in admiralty in this court, and that he has not any friends who are able or willing to give a stipulation for costs in his behalf, so that your petitioner has been and will be unable to file his answer and defend unless he is discharged from all stipulation of costs, and permitted to defend as a poor person.

Wherefore petitioner asks to be discharged from all stipulations and liabilities for costs, and that the court direct that upon the filing of his answer the clerk be directed to receive and file the same and that as to this defendant the suit may proceed without such stipulation.

JAMES A. GALLAGHER.

Sworn to before me this 11th day of December, 1893.

W. H. BRADY,
Notary Public, N. Y. Co.

23 To the Honorable Addison Brown, judge of the district court of the United States for the southern district of New York:

The separate answer of James A. Gallagher to the libel herein respectfully shows to the court:

First. The respondent denies that he has any knowledge or information sufficient to form a belief as to any of the allegations contained in the first article of the libel herein, and, therefore, he neither admits nor denies the same, and prays that the libelants herein may be put to such proof herein as they may be advised.

Second. Respondent admits so much of the allegations contained in the second article of the libel herein as alleges that the respondent was at the times in said libel mentioned the acting master of the fireboat the *New Yorker*, but as to the other allegations in said article contained respondent denies that he has any knowledge or information touching the same, and therefore he neither admits nor denies the same and prays that the libelant may be put to such proof thereof as he may be advised.

Third. The respondent admits all of the allegations contained in the third article of the libel herein, save only and except this respondent denies, as in the said third article alleged, that the said fireboat, the *New Yorker*, immediately backed out into the river again, and then came forward into the slip, as she should have done in the first place, and went alongside the fireboat *William Havemeyer* and commenced playing on the fire.

And respondent further denies, as in said third article of the libel

herein alleged, that he informed the officer in charge of the said barkentine that it was not his (the respondent's) fault, but that it was the fault of the engineer of the fireboat, or that the engi-
24 neer of the said fireboat, the *New Yorker*, did not obey him, or that the city was responsible for the damages done to the said barkentine, or that if the same were presented they would be paid.

Fourth. Respondent denies, as in the fourth article of the libel herein alleged, that the said collision was wholly due to the fault and negligence of those in charge of the said steam fireboat, the *New Yorker*, or that the said steam fireboat, the *New Yorker*, had no proper and sufficient lookout properly stationed in the faithful discharge of his duties, or that from any fault on the part of those in charge of and navigating the *New Yorker*, the said *New Yorker* failed to keep out of the way of the libelant's said barkentine, or that from any fault on the part of the said steam fireboat the *New Yorker*, or those in charge of and navigating her, the said *New Yorker* did not stop and back and try to avoid the same, or that the said steam fireboat *New Yorker* was not properly officered or manned, and did not have a competent engineer in charge of her engine, to properly give heed to the orders given and to execute the same; but, on the contrary, this respondent avers that at the time of the said collision, and for all the time previous thereto, the said fireboat the *New Yorker* did have a proper and sufficient lookout, properly stationed and diligently engaged in the discharge of his duties, and that the said steam fireboat the *New Yorker* did stop and back and try to avoid the collision, and that the said steam fireboat, the *New Yorker*, was properly officered and manned and did have a competent engineer in charge of her engines to properly give heed to the orders given, and to execute the same.

And as to the negligence charged, in that the said fireboat, the *New Yorker*, failed to keep out of the way of libelant's said barkentine, this respondent alleges that, for the reasons hereinafter stated, the said collision was unavoidable and not to be avoided by respondent or those in charge of and navigating the said fireboat, the *New Yorker*.

25 Fifth. Respondent denies that he has any knowledge or information sufficient to form a belief as to whether or not, as in the fifth article of the libel herein alleged, the libellant has sustained damages in the sum of $908.48, for repairs to the said barkentine and the delay and expenses incident thereto or in any other sum, and therefore this respondent neither admits nor denies the same, and prays that the libelant may be put to his proof thereon.

And for a separate and further defense and touching all of the incidents and proceedings attending the collision complained of in this — the respondent alleges the truth to be:

Sixth. That on or about the 11th day of June last, the fireboat *New Yorker*, between four and half past four in the afternoon of that day, being called thereto by telegraphic signal, left the place where she was moored, to wit, at the foot of Castle Garden in the North river, and properly officered, manned and appointed and in

charge of deponent, who was at all the times hereinafter mentioned at the wheel and diligently engaged in attending to his duties, proceeded around the Battery, and up the East river, and in order safely to enter the slip between pier 48 and pier 49 in the East river, and reach the bulkhead to attach her hose, observing when she reached a point to the south of pier 48, that the fireboat *Havemeyer* lay along the end of pier 48 manœuvering to effect her entrance into the slip, and that along the northerly side of pier 48 was lying, from the bulkhead out, a barkentine, and from the end of the pier line, heading in towards the bulkhead, a schooner, occupying some twenty or thirty feet of the open water between the said two piers 48 and 49, and from the pier line, in along the southerly side of pier 49, lay a railroad float occupying some thirty-five or forty feet of the open water between the said two piers, and it being the duty of the fireboat *New Yorker* to proceed with all possible dispatch into said slip, and up to the bulkhead lying between said piers 48 and 49, deponent, in charge of and navigating the
26 fireboat *New Yorker*, heading out a sufficient distance into the East river, proceeding up to a point above pier 49, and then headed down, so as to make the open water between the said piers 48 and 49; and, with the tide running as it was, was compelled, in order to avoid a collision with the railroad float lying along the southerly side of pier 49, to proceed at a moderate rate of speed into the said slip, in order to keep said fireboat under control, and make his proper connections at the bulkhead.

That owing to the crowded condition of the slip and to the state of the tide and the necessity of making the slip under certain headway, the said fireboat *New Yorker*, without any fault on the part of those in charge of and navigating the said boat, came into collision with a barkentine lying along the northerly side of said pier 48, which your respondent, on information and belief, admits to have been the barkentine *Linda Park*.

And respondent avers that when endeavoring to make the slip as aforesaid, he found that owing to the tide *that* the said fireboat *New Yorker* would not make the bulkhead without danger of colliding with the *Linda Park*, that he immediately gave in quick succession four signals to the engine-room consisting of four gongs followed by a jingle bell, intending thereby to and as a matter of fact signaling to the engineer in charge of the fireboat *New Yorker* that as soon as might be the said fireboat *New Yorker* was to be stopped and her engines reversed full speed astern, and that, as deponent is informed and verily believes, the said signals were properly, immediately and without any delay obeyed by the engineer in charge.

Deponent avers that the said collision, or any subsequent damage resulting therefrom, was not caused or contributed to by any fault or negligence on the part of the said steam fireboat the *New Yorker*, or of the persons in charge of or navigating her, but that the said collision was unavoidable.

27 Wherefore, respondent prays that the libel herein be dismissed as against this respondent, with costs.

GEORGE L. STERLING,
Proctor for Respondent, James A. Gallagher.

SOUTHERN DISTRICT OF NEW YORK, *ss.*:

James A. Gallagher, being duly sworn, says:

That he has read the foregoing answer, and that he knows the contents thereof, and that the facts therein stated are true to his knowledge, except as to those matters which are therein alleged to be stated on information and belief and as to those matters he believes it to be true.

JAMES A. GALLAGHER.

Subscribed and sworn to before me this 11th day of December, 1893.

W. H. BRADY,
Notary Public, N. Y. Co.

(Endorsed:) Affidavit of James A. Gallagher and answer to libel. Filed Dec. 12, 1893.

28 U. S. District Court, Southern District of New York.

ROBERT W. WORKMAN, Libelant,
vs.
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF New York, The Fire Department of the City of New York, and James A. Gallagher, Respondents.

The respondent, The Fire Department of the City of New York, excepts to the sufficiency of the allegations contained in the second article of the said libel as affecting the said respondent, in this:

(*a.*) That the said libel does not allege or state in what capacity the Fire Department of the City of New York is sued.

(*b.*) That the said libel does not state whether or not the Fire Department of the City of New York is a corporation, foreign or domestic.

(*c.*) That there is no negligence charged in the said libel against the respondent, The Fire Department of the City of New York, nor is there any liability charged against the respondent, The Fire Department of the City of New York.

WILLIAM L. FINDLEY,
Proctor for The Fire Department,
No. 120 *Broadway, N. Y. City.*

(Endorsed:) Exceptions of the respondent, The Fire Department, to sufficiency of libel and notice of hearing. Filed Dec. 12, 1893.

29 At a stated term of the United States district court for the southern district of New York, held at the court-rooms in the post-office building of the city of New York, on the 27th day of December, 1893.

Present: Hon. Addison Brown, judge.

ROBERT W. WORKMAN, Libellant,
against
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK, The Fire Department of the City of New York, and James A. Gallagher, Respondents.

Exceptions to the sufficiency of the libel herein having been filed by the respondent, The Fire Department of the City of New York, and duly noticed for hearing, and the exceptions so filed by respondent, The Fire Department of the City of New York, coming on to be heard at a stated term of the district court of the United States for the southern district of New York, held at the court-rooms in the post-office building in the city of New York, on the 19th day of December, 1893, and after hearing James M. Ward, Esq., of counsel, in support of the said exceptions and Charles C. Burlingham, Esq., of counsel for the libellant, in opposition thereto—

Ordered, that the exceptions indicated as "*a*" and "*b*" in the exceptions as filed, be and the same are hereby allowed, and that the exception indicated "*c*" in the exceptions as filed be and the same is hereby disallowed.

30 Further ordered, that within four days after service of a copy of this order and notice of entry upon the proctor for the libellant, that the libel herein be amended by alleging in what capacity the fire department of the city of New York is sued, and that the said libel be further amended by alleging whether the fire department of the city of New York is a corporation foreign or domestic.

And further ordered, that unless the libel herein is so amended on or before January 2d, 1894, or such further time as may be allowed, that the libel as to the respondent, The Fire Department of the City of New York, be dismissed.

ADDISON BROWN.

(Endorsed:) Order sustaining exceptions. Filed Dec. 27, 1893.

31 United States District Court, Southern District of New York.

ROBERT W. WORKMAN, Libellant,
against
THE FIRE DEPARTMENT OF THE CITY OF NEW YORK, Impleaded.

The libellant hereby amends the second article of the amended libel herein by substituting for the last four lines of said article the following allegation:

That, at such times, the respondent, The Fire Department of the City of New York, which is a department of the municipal government of the city of New York, was a quasi corporation, and as such, by virtue of the statutes in such cases made and provided, particularly chapter 11 of the act known as the consolidation act (chap. 410 of the Laws of New York, 1882), had the keeping and custody of all fire apparatus and all property of whatever nature, including said

fireboat *New Yorker*, belonging to said city. At such times the respondent Gallagher was the acting master of said fireboat.

January 2, 1894.

WING, SHOUDY & PUTNAM,
Proctors for Libellant.

(Endorsed:) Amendment to amended libel. Filed January 2, 1894.

32 District Court of the United States for the Southern District of New York.

To the Honorable Addison Brown, judge of the district court for the southern district of New York:

The answer of the Fire Department of the City of New York to the libel of Robert W. Workman, and to the amended libel and the amendment to the amended libel herein, alleges as follows:

First. That the fire department is, under and by virtue of the statute in such case made and provided, to wit, under and by virtue of section 34 of chapter 410 of the Laws of 1882 and the acts amendatory thereof, one of the departments of the city of New York.

Second. That under and by virtue of the statute in such case made and provided, to wit, under and by virtue of section 40 of chapter 410 of the Laws of 1882, that the head of the fire department is a board, and that the said board consists of three persons, to be known as fire commissioners of the city of New York.

Third. That under and by virtue of the statute in such case made and provided, to wit, under and by virtue of the provisions of section 424 of chapter 410 of the Laws of 1882, the head of the said fire department, to wit, the said board of fire commissioners, are vested with and do possess and exercise fully and exclusively all powers and perform all duties incident to and pertinent to the said Fire Department of the City of New York, and that the said fire department can and does exercise its functions by and through the head of the said fire department, to wit, by and through the said board of fire commissioners, and in no other way whatsoever.

33 Fourth. The defendant, The Fire Department, and by its head, the said Board of Fire Commissioners, alleges that it is not a corporation, either foreign or domestic, or a quasi corporation, and that from the times mentioned in the said libel, and for a long time prior thereto, there was not and is not now any such corporation or quasi corporation.

Fifth. The defendant, The Fire Department of the City of New York, for further answer to the amended libel and the amendment to the said amended libel herein, alleges that it has no knowledge or information sufficient to form a belief as to any of the allegations contained in the first article of the amended libel herein, and therefore neither admits nor denies the same, but prays that the libellant may be put to such proof thereof as he may be advised.

Sixth. Except as hereinbefore denied, the respondent, The Fire

Department of the City of New York, admits the allegations contained in the second article of the libel herein, but as to the amendment to the said second article of the amended libel, it denies that it is a corporation, either foreign or domestic, or as is in the amendment of the said second article herein alleged, that it is a quasi corporation; and further alleges that at the times in the said libel mentioned, and for a long time prior thereto, there was not and is not now any such corporation or quasi corporation.

And for further answer to the libel herein, and on information and belief, the defendant, The Fire Department of the City of New York, by its head, to wit, the Board of Fire Commissioners of the City of New York, alleges the truth touching the collision in the said libel complained of to have been as follows:

That on or about the eleventh day of June last the fireboat *New Yorker*, between four and half past four in the afternoon of that day, being called thereto by telegraphic signal, left the place where she was moored, to wit, at the foot of Castle Garden, in the
34 North river, and properly officered, manned and appointed, and in charge of a skillful pilot, who was at all the times hereinafter mentioned at the wheel and diligently engaged in attending to his duties, proceeded around the Battery and up the East river, and in order safely to enter the slip between pier 48 and pier 49, East river, and reach the bulkhead to attach her hose, observing when she reached a point to the south of pier 48, that the fireboat *Havemeyer* lay along the end of pier 48, manœuvering to effect her entrance into the slip, and that along the northerly side of pier 48 was lying, from the bulkhead out, a barkentine, and from the end of the pier line, heading in towards the bulkhead, a schooner, occupying some 20 or 30 feet of the open water between the said two piers 48 and 49, and from the pier line, in along the southerly side of pier 49, lay a railroad float, occupying some 35 or 40 feet of the open water between the said two piers, and it being the duty of the fireboat *New Yorker* to proceed with all possible dispatch into said slip, and up to the bulkhead lying between said piers 48 and 49, the pilot in charge of and navigating the fireboat *New Yorker*, heading out a sufficient distance into the East river, proceeded up to a point above pier 49 and then headed down so as to make the open water between the said piers 48 and 49, and, with the tide running as it was, was compelled, in order to avoid a collision with the railroad float lying along the southerly side of pier 49, to proceed at a moderate rate of speed into the said slip, in order to keep said fireboat under control and make his proper connections at the bulkhead.

That, owing to the crowded condition of the slip and to the state of the tide and the necessity of making the slip under certain headway, the said fireboat *New Yorker*, without any fault on the part of those in charge of and navigating the said boat, came into collision with a barkentine lying along the northerly side of said pier 48, which your respondent, on information and belief, admits to have been the barkentine *Linda Park*.

And on information and belief respondent avers that the
35 said collision and any subsequent damage resulting therefrom were not caused or contributed to by any fault or negligence on the part of the steam fireboat *New Yorker* or of the persons in charge of and navigating her, but that the said collision was unavoidable on her part.

Wherefore respondent prays that the libel as against it be dismissed with costs.

WILLIAM L. FINDLEY,
Proctor for Respondents
The Fire Department of the City of New York.

CITY AND COUNTY OF NEW YORK, *ss:*

Anthony Eickhoff, being duly sworn, deposes and says: That he is the acting president of the board of fire commissioners, which said board of fire commissioners is the head of the fire department of the city of New York. That he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Deponent further says that the reason why this verification is not made by the respondent, The Fire Department of the City of New York, is that the fire department cannot lawfully act save only by the head of the said fire department, to wit, the board of fire commissioners.

Deponent further says that his knowledge of the matters and things set forth in the said answer is derived from the records of the fire department of the city of New York and from statements made to him by the officers and firemen selected by the said board of fire commissioners as the head of the fire department.

ANT. L. EICKHOFF.

Sworn to before me this 17th day of January, 1894.

DAVID GORHAM,
Notary Public (125), *N. Y. County.*

(Endorsed:) Answer of the Fire Department. Filed January 18, 1894.

36 United States District Court, Southern District of New York.

ROBERT W. WORKMAN
v.
THE MAYOR, ETC., OF THE CITY OF NEW YORK, The Fire Department of the City of New York, and James A. Gallagher.

Before Hon. Addison Brown, Judge.

NEW YORK, *April* 9, 1894.

Appearances.

Messrs. Wing, Shoudy & Putnam (Mr. Putnam and Mr. Burlingham, of counsel), for libelant; William H. Clark, Esq., counsel to the corporation, proctor for the Mayor, Aldermen and Commonalty of the City of New York;

Wm. L. Findlay, Esq., proctor of the Fire Department; George L. Sterling, Esq., proctor for James A. Gallagher (James M. Ward, Esq., of counsel for all respondents).

The claims of the libel and answer are stated.

WILLIAM WESTFALL, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. BURLINGHAM:

Q. In June last you were watchman on the barkentine *Linda Park?*

A. The *Linda Park;* yes, sir.

Q. And in the employ of Van Hoesen Brothers then?

A. Of Van Hoesen Brothers then.

Q. You and your family were on that barkentine that night?

A. I only had my wife that afternoon on board, and my daughter.

Q. But you had been yourself in charge of her?

A. For six weeks.

37 Q. How long have you been about this port as a watchman?

A. I am with Mr. Van Hoesen a year.

Q Before that you followed the sea?

A. I followed the sea.

Q. For how many years?

A. Thirty-six years.

Q. You have been master?

A. I have been master in America, and master in England.

Q. And of large ships?

A. I have been on 800 tons in England and about 400 tons in New York.

Q. You followed the sea all the time up to the time you began to work for Van Hoesen?

A. All the time, yes, sir.

Q. What is the length of the *Linda Park?*

A. Oh, she is about 400.

Q. I am not asking her tonnage. Her length, how long is she?

A. Oh, her length. I could not exactly say what the length was, I think about 150 feet or so.
Q. What is her beam, about?
A. About 35.
Q. She was lying on the north side of pier 48, East river?
A. Pier 48, East river; yes, sir.
Q. Head out or in?
A. Head out.
Q. How near was her stern to the bulkhead?
A. Say about 15 feet.
Q. What was there ahead of her further towards the river?
A. A schooner.
Q. The other schooner lay head out or head in?
A. Head in.
Q. And how much space was there between the barkentine and the schooner?
A. Oh, there was very little space; there was, I suppose, you may say about 25 feet.

By the COURT:

Q. Did the schooner's bowsprit overrun your deck?
A. No, oh no, no, sir; there was alongside a barge when the *Havemeyer* came in, right alongside of us.

By Mr. BURLINGHAM:

Q. What kind of barge?
A. One of the railroad barges, a covered barge.
Q. Won't you tell us what you mean by 25 or 30 feet between the schooner and the barkentine; was that from stem to stem or from bowsprit to bowsprit?
38
A. You may say from stem to stem.
Q. Then didn't the bowsprits come together at all?
A. Yes, close to it.
Q. How near did the two ends of the bowsprits come?
A. I could not remember that.
Q. Jib-boom I mean?
A. I suppose you may say about five or six feet.
Q. Were there any other vessels in the slip moored?
A. There was a railroad float laying in pier 49, and the barge what was alongside of us that afternoon when the fire commenced.

By the COURT:

Q. Where was that float?
A. The float was at 49.
Q. Right opposite you?
A. On another dock; yes, sir.
Q. Right across from you?
A. Not quite.

By Mr. BURLINGHAM:

Q. Which way?

A. Just about ahead it commenced and laid more to the end of the dock.

Q. It was more abreast of the schooner than of you, was it?

A. Yes, half and half you may say.

By the COURT:

Q. Was there anything alongside of the schooner, abreast of the schooner?

A. No, sir.

Q. Which was widest, which had the most beam, the schooner or the barkentine?

A. Oh, the—it would be just the same, the railroad barges ain't very wide, 35 feet.

By Mr. BURLINGHAM:

Q. Was the schooner as much beam as your vessel, his honor asked?

A. Oh, no, the schooner was only narrow.

Q. About how much do you think?

A. About 25; only a small schooner.

Q. The barge that was alongside of the barkentine had what beam?

A. She had about 30 or 35 feet.

39 Q. And the railroad float across the slip at pier 49 was what beam should you say?

A. They have about 22 I suppose, these railroads.

Q. Was it a float over there for cars?

A. For cars to get on.

Q. One track or two tracks?

A. Two tracks.

By the COURT:

Q. Did you see the *New Yorker* come in?

A. Yes, I see the *Havemeyer* had plenty of room and so did the *New Yorker*.

By Mr. BURLINGHAM:

Q. When did the fire break out and where was it?

A. Half past five. I first stood with my wife and the mate at the captain's house when I see the smoke come off the roof and I said——

Q. What time was it?

A. Between five and six.

Q. Where was the fire?

A. In Clinton, corner Clinton and South street, the old tobacco inspection.

Q. On the other side of South street?

A. Yes, sir.

Q. Did the engines come to the fire?

A. Yes, sir.

Q. When did the *Havemeyer* come?

A. The *Havemeyer* came, she was the first fireboat that came.
Q. Where did she go?
A. With her head up the street, up to the bulkhead.

By the COURT:

Q. How far off from you as she lay there?
A. I suppose about 20 feet.
Q. That was clear?
A. Yes.
Q. Clear water between you and the barge that lay alongside of you. She was outside of the barge, of course?
A. Oh, when the *Havemeyer* came in? When the fire broke out the barge dropped down out of the fireboat's way.

By Mr. BURLINGHAM:

Q. Which way?
A. Alongside of us.
Q. Where had she been?
A. She was laying on the bulkhead; she only dropped right alongside of us.
Q. Was she near your bow or stern?
A. No, against the stern, you may say about amidship.
40 Q. How much space was there between the barge and the fireboat *Havemeyer* his honor asked you?
A. Oh, it was a good bit.
Q. How much?
A. I don't remember.
Q. Was the *Havemeyer* nearer 49 or 48?
A. The *Havemeyer*, she was right in the middle.
Q. Middle of what, the space?
A. Of the slip, yes, sir.

By the COURT:

Q. Did the stern of the *Havemeyer* lap the barge?
A. No, sir.
Q. It did-'t lap the barge?
A. No, sir. There was plenty of room; and the *New Yorker* came inside of the *Havemeyer*, between the barge and the *Havemeyer*, she lay more to 49 slip.
Q. Did she lie up and down the slip just like the wharf, the way they run in there?
A. Yes, sir.

By Mr. BURLINGHAM:

Q. With her head to the bulkhead?
A. With her head to the bulkhead.
Q. Did the stern of the *Havemeyer* overrun the line of the barge at all?
A. No; more to pier 49.

By Mr. PUTNAM:

Q. How far was it from the stern of your barge back to the bulkhead?

A. About 18 feet.

Q. Then the side of the first fireboat, *Havemeyer*, did lap the quarter and side of the bark?

A. Yes.

Q. And after the *Havemeyer* came there, there was a scow between the side of the *Havemeyer* and the side of the bark?

A. Yes.

Q. Can you tell about how much water there was between the scow alongside of the bark and the *Havemeyer*, how much open water?

A. Oh, there was about 40 feet or more—50.

Q. Do you think the *Havemeyer* was about in the middle of the open slip, or nearer one pier or the other?

A. More to 49.

41 Q. Did the *Havemeyer* remain in about the same position after she got there until the collision?

A. Yes, sir.

Q. How long after the *Havemeyer* got there was it that you first saw the fireboat *New Yorker?*

A. About 20 minutes afterwards.

Q. When you saw the *New Yorker* first where was she?

A. She was on pier 49, forward on the bulkhead.

Q. That is, the outer end of the pier?

A. She struck the outer end of pier 49, when I sung out right away to the mate, "Look at that bloody fool."

Q. When you first saw the fireboat had she come down the river or up the river?

A. She came going up the river—going north.

Q. I mean the *New Yorker.*

A. Yes.

Q. And she struck her bow against the outer end of pier 49?

A. Against the outer end of pier 49.

Q. That is the time you first saw her?

A. That is the time I first saw her.

Q. Did you watch her from that time?

A. Yes.

Q. Watched her close?

A. Yes.

Q. And how did she clear the pier?

A. She had difficulty to back out again to enter the slip, and when she entered the slip she was all right; she backed out and came up to the slip.

Q. When she got into the slip then how was she heading the second time?

A. She headed right enough until her nose turned towards us; right straight up the slip she headed.

Q. Did you see anybody in the pilot-house of the fireboat?

A. I see somebody there leave the wheel, and the wheel spinned around, at the time she came up right away up to us and struck us ahead.

Q. When you say you saw somebody leave the wheel where did they go that you saw?

A. Only talking to somebody on the edge of the house.

Q. Did he come out of the pilot-house?

A. Yes, sir.

Q. Which side?

A. On the port side; on our side; it was the port side.

Q. Do you know who it was?

A. No, sir.

42 By the COURT:

Q. Do you mean the wheelsman?

A. The man that had charge of the wheel spoke to the engineer or somebody.

By Mr. PUTNAM:

Q. How far away was the New Yorker at the time?

—. ——.

By the COURT:

Q. Where was the engineer? You said spoke to the engineer.

A. He stepped right against the engine-house aft of the high house—it is a high deck and the engineer is underneath of it; and I see him come out and talking to him, and the wheel spinned around and the head got right into us.

Q. Did he go away from the door of the pilot-house in order to speak to the engineer?

A. That is what I see.

Q. How far away from the door did he go?

A. Just from *here* to *there*.

Q. Three or four feet?

A. Yes.

By Mr. PUTNAM:

Q. Did you see the engineer at all at the time?

A. No, sir.

Q. But you thought he was speaking to the engineer?

A. I did not see the engineer at all, but that is what my opinion was, that he gave some words to the engineer.

Q. How far away was this fireboat at the time you first saw the door open and the man come out of the pilot-house?

A. She was mostly right up to us; she was, I suppose, about—you may say she was off about 30 or 40 feet.

Q. Very near?

A. Yes, sir.

Q. Could you see the spokes of the wheel?

A. Yes, sir; plain; and I stood on the rail, on our rail, and see everything.

Q. What did you see of the steering wheel?
A. I see it spin around, the wheel.
Q. Could you say which way, or couldn't you tell that?
43 A. When you let go a ship's wheel it is bound to spin one way and come back another way with the currents and the tide there.
Q. Could you see which way the wheel did spin around or didn't you notice?
A. No, I did not take notice of that.
Q. Did you see any change in the heading of the fireboat?
A. Yes, sir, certainly.
Q. Which way?
A. Heading against us; come right on top of us.
Q. How did the fireboat strike the bark?
A. Struck right underneath the bowsprit; lifted the bowsprit right about four inches off the foremast.

By the COURT:

Q. What of the fireboat struck?
A. Went right underneath our iron bowsprit.
Q. What part of the fireboat struck you?
A. The head, her head—the foremost part.
Q. Do you mean the stem?
A. I mean the stem went right through to the bulkhead; left there a mark on the bulkhead; so he had a big force on him.
Q. Are you talking about the bulkhead or pier—which do you mean?
A. On the bulkhead on the dock. She broke all our hawser, a steel hawser, too; we had three parts of the steel hawser out on one side and on the other side two.
Q. Was it your stem or stern the fireboat ran against?
A. The stem.

By Mr. PUTNAM:

Q. You don't mean the bulkhead—you mean the side of the wharf, don't you?
A. Yes, the bulkhead on the wharf.
Q. We mean by "bulkhead" the end towards the street. You don't mean that?
A. No, the dock. The mark is to be seen today when you go down there.

By the COURT:

Q. Did she strike your stem or not?
A. No; right underneath the bowsprit, the gear.
44 Q. She didn't strike your stem?
A. No, sir; only carried away the gear and lifted the bowsprit right up.
Q. The martingale, and so on, were carried away?
A. Yes, sir; that was all gone.

By Mr. PUTNAM:

Q. About what angle did she strike; how many points; can you tell that?

A. Yes, you may say about six or seven points. A boat coming up that way, and a vessel laying alongside of the dock and coming that way right into us, I suppose about five points it would have to be, or six points.

Q. How was the vessel loaded, as to being light or deep?

A. No, sir, the vessel was just ready for sea.

Q. She was fully loaded?

A. Yes, sir; that is my last night; that is the reason I brought my wife and daughter on board; the hatches were battened down.

Q. Do you know how high up the bowsprit was, where it goes into the knightheads, above the water?

A. Above the water? You may take it for 13 or 14 feet.

Q. That is the part of the bowsprit that goes into the hull of the vessel?

A. Yes, from the water edge.

Q. Was there anybody else on board the barkentine at the time except you?

A. Oh, there was my wife and my daughter and the mate, second mate, and we were all standing on the poop.

Q. Were any of the crew there?

A. The crew were all on board.

By the COURT:

Q. What did it do when it ran underneath your bowsprit?

A. We run right away and took another hawser.

Q. What was the effect, the running under; you said it carried away the gear, martingale and so on; what else did it do?

A. The hawser of the ship was fast, the steel hawser.

Q. What other damage did the fireboat do by running in under your bowsprit?

A. I could not say.

Q. Did it hurt the bowsprit any?

45 A. Yes, sir. When the surveyor come on board he told the captain right away he could not go to sea, as he had to be repaired and get a new bowsprit; the bowsprit was all crooked and split; it was an iron bowsprit.

By Mr. PUTNAM:

Q. What was the hull of this vessel, wood or iron?

A. Iron.

Q. You say the hawsers were carried away too?

A. Yes.

Q. How many hawsers were carried away or parted?

A. There was one or two; we had two or three parts out of the steel hawser and one we had in three parts out and another one we had in two parts out.

Q. The forward hawsers were damaged, were they?

A. Yes, sir.
Q. How much?
A. Two or three places were cut.
Q. Cut into?
A. Yes, sir.
Q. How was the blow, as to the sound of the blow, when it struck?
A. Oh, it was a terrible blow, I thought the foremast and all would come down.
Q. How did the fireboat go away after the collision?
A. She had to back out the best she could do.
Q. How did she back clear?
A. She back- clear nice and good enough.
Q. And where did she go then?
A. She went right alongside of the *Havemeyer* and put out a hawser.
Q. Towards the bulkhead?
A. Yes; went right alongside of the *Havemeyer*.

By the COURT:

Q. Which side of the *Havemeyer* did she go—towards you?
A. Yes; towards 48—the *Havemeyer*.

By Mr. PUTNAM:

Q. After the *Havemeyer* got in there did the captain come on board your vessel?
A. No; not from the *Havemeyer*, but from the *New Yorker* the captain, what had charge of the wheel, he came on board and told me——
Q. Wait a moment. When was that—how long after the collision was that?
A. I could not remember; he come right away.
46 Q. It was after the fireboat got in?
A. He told me and the mate he gave the signal to the engineer and it was the engineer's fault.
Q. Did you hear any talk by the mate to him at the time?
A. Yes, sir; I stood right alongside.
Q. What did the mate say?
A. The mate told him it couldn't be helped now, "You have to pay;" the mate told him right away there was nobody in the wheel-house, but I did see a man in the wheel-house and I see him coming out. She pointed right enough up the slip.
Q. Did he make any answer, when the mate made the remark, whether there was anybody in the wheel-house or not?
A. He said the fire department would pay that.
Q. Did he say anything whether they came out of the wheel-house or not?
A. Oh, he said he was inside.
Q. If he had kept the course he was on before he came out of the wheel-house would there have been any accident?
A. All right; no sir.

Counsel for respondents object to the answer. Objection overruled.

A. (continued). That was a flood tide, and surely on the flood tide a vessel coming in, she had to be swept on the other side against the tide. It was flood tide when it happened, and strong tide too at the same time, and she struck the float on 49 before she came on the other side. It was only poor management, anybody can know that very well what see it.

Q. You think that the flood tide set up towards 49?

A. Certainly.

Q. Was there room enough for the fireboat to come in on the upper side of the slip instead of coming down on the side of 48?

A. Yes, sir; there was nothing there only the float.

Q. That is the float you said was for two cars, double track?

A. Laying on pier 49, the float.

Q. About what time in the day did this accident happen?

A. Between five and six; I couldn't exactly say.

47 Q. Broad daylight was it still?

A. Daylight, summer time.

Q. Fine weather?

A. Fine weather, beautiful day; that is the reason I took my wife and daughter on board of the ship.

Q. Was there any wind at the time?

A. There was a little easterly wind I suppose.

Q. Light wind?

A. Yes, not much, moderate wind.

Cross-examined by counsel for respondents:

By Mr. WARD:

Q. Have you done any navigating around the harbor of New York?

A. Yes, sir.

Q. Are you familiar with the tides around the harbor of New York?

A. Yes. I have been three years captain of the National Steamship's vessel, that I know the tides.

Q. Have you ever lain in this slip before, 48 and 49?

A. No, sir.

Q. Do you know whether or not there are any eddies that set in there?

A. I couldn't swear to it.

Q. That you don't know anything about?

A. No, sir. I never lay on that pier before.

Q. In what capacity did you say you were employed on the barkentine?

A. Watchman.

Q. Were you there all day?

A. No, sir.

Q. When did you come on?

A. I came about three o'clock with my wife and daughter.
Q. What hours were you aboard of that boat, supposed to be?
A. Six to six.
Q. What time did you usally go aboard the boat?
A. Generally I get my tea about five o'clock and I leave——
Q. But this afternoon you say you went aboard at three o'clock?
A. Three o'clock with my daughter and wife, to show the vessel.
Q. Did your daughter and wife stay aboard the barkentine with you?
A. The time it happened; they can't tell any more than I can tell by my remembrance. Yes, when the *action* happened they were just on the rail; I tried to put them ashore.
48 Q. Who else was aboard the boat at the time of the accident?
A. All the crew, only the captain; the second mate and mate was talking to my wife and daughter.
Q. And you say you were aboard there when the captain of the *New Yorker* came aboard?
A. Yes; stood right alongside.
Q. And had the conversation with the mate?
A. Yes; stood right alongside of him.
Q. Do you see him here?
A. Yes, sir.
Q. Which one?
A. That one.
Q. Sitting there in uniform?
A. Yes, sir.
Q. Which one of the men in uniform?
A. With the light moustache.
Q. When did he come aboard?
A. When the boat commenced to play the hose.
Q. That is the very afternoon of the accident?
A. Yes, sir; the same, just right away.
Q. Where were you on the 23d day of June, 1883?
A. Oh, I couldn't say that.
Q. Were you in New York?
A. I have been in New York all the time; I only—that June I moved to Brooklyn; I live at 53d street.
Q. Do you know there was testimony taken in this case?
A. No, sir; never.
Q. I didn't ask you whether you were examined. Do you know that some of the people on board that boat on the day of the accident have been examined about this collision?
A. No, sir.
Q. You don't know that?
A. No, sir. I went to the head chief, Mr. Croker, and told him the same day of the fire; he said, "Let the captain come up to-morrow."
Q. Have you had the testimony, any testimony in this case, read to you before you testified?
A. No, sir; never knew nothing about it.

Q. Were you aboard the boat when the *Havemeyer* came in?
A. Yes, sir.
Q. What direction did she come from?
A. From the north.
Q. That is from above pier 49?
A. Yes, sir.
49 Q. That is the first of the fireboats, is it?
A. Yes, sir, that is the first came in.
Q. When did you first see the *New Yorker*?
A. See the *New Yorker* when she got afoul on pier 49 on the bulkhead; she come right with the float up and got afoul just on the corner, on the edge of 49.
Q. Where were you standing then?
A. On the poop.
Q. Did you keep your eye on the *New Yorker* from that time?
A. Yes, sir; and watching her coming in and long time before he got clear of the corner.
Q. How long did it take him to get clear of the corner?
A. I could not say how long it took him. It is no use a man saying——
Q. You don't know, then?
A. No.
Q. How did he strike the corner as he came up the river? Was he head on up the river when he struck the corner?
A. Yes, sir.
Q. Wasn't trying to come in the slip?
A. Whether he was full speed or not, he got afoul on the corner.
Q. On that diagram I show you, where do you say the *New Yorker* struck pier 49?
A. *Here*; right *there*.
Q. *There* is pier 49.
A. You have got it another way. I lay at 48, *here*. She struck right *here* on the corner.
Q. She struck head on?
A. Yes.
Q. Sure of that?
A. Yes; and tried to get clear there first. That is when we first took notice of her. Then she come right enough in about *here* and come right in *there*, where we lay, underneath our bowsprit (indicating the southeast corner of 49).
Q. Do you know anything about steering gear?
A. I have been quartermaster of the navy long enough to steer.
Q. Do you know the difference between the wheels steered by hand and the steam steering gear?
A. I had to know it.
Q. Don't you know that a steam wheel won't revolve if you let it alone?
A. I don't know anything about the steam steering. I
50 must not say I know anything about the new fashion by steam steering. I don't know anything about that.

Q. But you said you saw the wheel in the pilot-house revolve around.

A. Revolve around, yes. I swear to that.

Q. On which side of the pilot-house was the door that you say he came out of?

A. On the port side, on our side.

Q. Did you look at the house closely enough to know how many doors there are to it?

A. No, sir.

Q. You only know there is a door on the port side?

A. I only see him come out.

Q. Of the door on the port side?

A. He came out on that side anyway, on the port side.

Q. Out of the pilot-house?

A. Yes, sir.

Q. You say he left the wheel?

A. I see him talking like that over—I thought it was to the engineer—and before he got around to the wheel to hold fast the wheel the boat was right underneath our bowsprit.

Q. What I want to know is what side of the pilot-house you saw him come out of?

A. I could not exactly say. I will commit no wrongness. It is nothing to me—I am pretty old and my remembrance is getting short—but I see him anyway; the mate said right away he was not in the wheel-house, and all to me, and "yes," I said——

Q. Did you see him coming out of the pilot-house at all?

A. Yes, sir; I did see him coming out.

Q. Didn't you say on your direct examination you saw him come out of a door on the port side of the pilot-house?

A. I won't say port side, but I see him come out of the pilot-house and talking to somebody off the little house, and before he got back again the wheel spinned around and the vessel hit underneath the bowsprit. It was bad management, that is all.

Q. Didn't you say on your direct examination you saw him come out of the door on the port side of the pilot-house?

A. I don't know if the port side.

Q. You don't know where he came out, do you?

A. He came out of the wheel-house; I will not swear what door.

51 Q. How many wheels are there in the pilot-house; how many steering wheels are there in the pilot-house of the fireboat *New Yorker?*

A. How many steering wheels are there in the pilot-house of the fireboat *New Yorker?* It is a double wheel, is it not, or a single wheel?

Q. Which is it?

A. Single wheel, I believe; I could not say; I will not commit no wrongness against the city. I call myself an American; but city or foreign vessels, I only say what is right and what I do know for sure.

Counsel for respondent- moves to strike out the last part of the answer.

Q. (repeated). How many steering wheels are there in the pilot-house of the fireboat *New Yorker?*

A. I didn't take notice. I see the wheel spinning around, and it was only one wheel.

Q. The railroad float lying along pier 49 was flush up, her stern with the pier line?

A. They have no stern and no head to it—a railroad float. There was plenty of room there.

A. I didn't ask that. I move to strike it out.

A. There was plenty of room for a big vessel; a 4,000 ton ship could get up there.

Counsel for respondent- moves to strike out the answer. Motion granted.

Q. The railroad float lying along pier 49 was flush up, her stern with the pier line?

A. Yes. She lay in the middle of the dock.

The COURT: He doesn't understand these things.

By the COURT:

Q. Counsel means to ask if the outer end of the float extended out as far as the outer line of the pier.

A. No.

By Mr. WARD:

Q. Where was she lying in the pier?

A. In the middle of the dock.

Q. Which dock?

A. Pier 49; in the middle of the dock.

52 Q. She lay about opposite your barkentine?

A. Just right half of our vessel and the schooner, just about the half. It was strong tide, the tide was pretty strong—there is no use talking—while the fireboat *New Yorker* had a job to clear that corner of 49; the tide run pretty strong.

Q. Did you see the *Havemeyer* come up the river or come down?

A. Come down the river.

Q. What did she do to get into the slip?

A. Nothing; only went right in and took the hose out, plenty of room; then the barge what was there in the road got frightened, I suppose, and she hauled away between me and the bulkhead, the stern of our vessel on the bulkhead; she hauled right alongside of it.

Counsel for respondents move to strike out the answer.

Q. What did she do to get into the slip?

A. Went right in the slip.

Q. What did the *New Yorker* do after you say she ran afoul of pier 49 before she got into the slip?

A. She straightened up and came straight in the slip.
Q. What do you mean by straightening up?
A. To clear her.
Q. Did she back away from the dock?
A. Certainly.
Q. Did she back out into the stream?
A. Yes, sir.
Q. Was she above or below pier 49?
A. She was only kind of just at the corner of 49 she — struck.
Q. At any time before she got into the slip did she get above pier 49?

Mr. PUTNAM: You mean further up the river towards Grand street?
Mr. WARD: Yes.

A. No, sir. Only just she struck and when she got clear of 49 she steered her course right in the middle of the slip.
Q. Then she came in straight into the middle of the slip?
A. Yes, sir.
Q. This fire was actually blazing, wasn't it?
53 A. Only just commenced. I was the first man ever see the smoke off the roof.
Q. Where were you?
A. I stood on the quarter-deck with my wife and daughter and the mate and second mate.
Q. On the quarter-deck?
A. Yes, sir.

By Mr. PUTNAM:

Q. How long had the fire been burning, or how long was it after you saw it before this accident?
A. I suppose about—I don't remember exactly. I know the *Havemeyer* was quick enough there; the *Havemeyer* was there, I think, in 15 or 20 minutes; and it was, I suppose, about half an hour before the *New Yorker* came, but I will not swear to that, I don't remember that.

Counsel for libellant offers in evidence the depositions of the following witnesses, taken by stipulation June 23d, 1893:
Peter Brown, first officer of the barkentine *Linda Park*.
George Parkerson, second officer.
Thomas Skinner, captain.

Mr. PUTNAM: I call your honor's attention especially to the fact that Thomas Skinner, the captain, was asked if he could comply with Mr. Ward's request to appear on the 6th of July and he said he could not.
Mr. WARD: Your honor, I supposed that testimony is admitted subject to the objections to be raised?
The COURT: Yes.

Libellant rests.

54 *Respondents' Case.*

Counsel for respondents offer in evidence the stipulation under which the testimony was taken.

It is marked Respondents' Exhibit A, April 9, 1894.

Counsel for respondents also offer in evidence section 34 of chapter 410 of the Laws of 1882.

Also sections 123, 423, 430, 431, 438, and a portion of section 440.

Counsel for respondents move to dismiss the libel as to the fire department, upon the ground that no evidence has been offered to show as plead that the fire department is a corporation or quasi-corporation, and that such fact is distinctly put in issue in the answer.

They also move to dismiss the libel as to the city, upon the ground that the city is not liable for the acts of the fire department.

GEORGE W. ERB, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. WARD:

Q. Are you employed by the city?

A. Yes, sir.

Q. And you were employed by the city in June, July and August, 1893?

A. Yes, sir.

Q. In what department of the city government are you employed?

A. Foreman and captain of the fireboat *Havemeyer;* synonymous terms.

Q. What do you call the fireboat *Havemeyer*, what is she known as?

A. Engine company No. 43.

Q. When you speak of being captain, do you speak of being captain of the engine company or fireboat?

A. Captain of the company.

Q. You are not a pilot?

A. No, sir.

Q. And it is simply in reference to the machinery of the boat as a fireboat engine that you speak of being captain?

A. Yes.

55 Q. What are your duties as captain, what relation do you bear to the crew of the *Havemeyer*?

A. I am the superior officer of the *Havemeyer*.

Q. You give the orders as to what is to be done with the boat, and so on?

A. Yes, sir.

Q. Were you in command of that boat on Sunday, June 11?

A. Yes.

Q. Where were you lying that day?

A. Foot of Grand street.

Q. Did you get a call to a fire about two or three or four o'clock that afternoon?
A. Yes, sir.
Q. Where was the fire?
A. Foot of Clinton street, East river.
Q. Did you come down on the boat?
A. Yes, sir.
Q. What time was that?
A. 4.30, I think, as near as I can remember, about 4.30.
Q. Where was the fire; at the foot of Clinton street?
A. Yes, sir.
Q. Where is that?
A. That is right on the corner of Clinton street, right at the head of the bulkhead.
Mr. PUTNAM: Head of which pier?
Mr. WARD: Pier 48.
Q. Was there any other fireboat in the slip when you got there?
A. No, sir.
Q. Were there any other boats in the slip?
A. Yes.
Q. Is your recollection clear today what boats were there?
A. At the end of pier 49 there was a railroad float.
Q. Is your recollection clear?
A. Very clear; yes, sir.
Q. You say that there was a railroad float at the end of the pier?
A. 49.

By the COURT:

Q. You don't mean across the end?
A. No, sir; I mean laying up against the side of the pier, inside, in the slip.

By Mr. WARD:

Q. How was she lying at the end of the pier; mean to say with one end of the railroad float flush with the pier line, or not?
56 A. I don't think it was exactly flush, I think there was a space probably four or five feet.
Q. Was there anything else lying in the slip?
A. Yes, sir; at the stern of the float there was a lighter.
Q. On that pier 49?
A. On that pier 49; yes, sir.
Q. Was there anything else alongside of pier 49?
A. No, sir.
Q. Was there anything in the slip along pier 48?

By the COURT:

Q. Was that lighter lying up against the side of the pier?
A. Yes, sir.
Q. Right astern of the float?
A. Right astern of the float; yes, sir.

Q. Wider or narrower than the float?
A. Oh, she was some narrower than the float I should judge.

By Mr. WARD:

Q. How wide do you think the railroad float was?
A. On a rough calculation I should say at least 40 feet, 35 or 40.
Q. And how wide was the lighter?
A. I should judge about 30.
Q. Then the lighter wasn't wider than the float?
A. No, sir.
Q. Were there any other boats in the slip?
A. Up against 48 there was a schooner.
Q. How was she lying?
A. She was lying very near the end.
Q. And facing out?
A. Facing out.
Q. Do you mean facing out?
A. I mean facing out towards the river.
Q. And anything else lying there?
A. The bark.
Q. How were those two boats lying with reference to each other, the barkentine and the schooner?
A. After the accident I saw the *Linda Park* and her bowspirt was over the schooner.
Q. How was the schooner's bowspirt?
A. It was out near the end of the dock.
Q. When you went into the slip where did you go, where did you take your boat?
A. Right up to the bulkhead.
57 Q. On the bulkhead nearer Clinton street?
A. Nearer Clinton street than the other because our stern was over against the float.

By Mr. PUTNAM:

Q. Which float do you mean?
A. I mean the railroad float.

By Mr. WARD:

Q. So you were lying catte-cornered at the end of the slip?
A. Yes. If you will allow me to explain I will tell you why I am so positive of that. Will that be satisfactory?
Q. You can explain. You are positive of that fact?
A. Yes, sir.

By the COURT:

Q. Your stern rested against the railroad float?
A. Yes, sir.
Q. Not against the lighter?
A. No, sir; and our quarter was up against the slip, laying catte-cornered, our starboard corner.
Q. Where was the lighter you spoke of?

A. The lighter I spoke of was behind the float, up against the slip; she wasn't as long as us.

Q. And your quarter went in between the lighter and the float?

A. No, sir; went up against the float; the float extended out from the lighter.

Q. I thought you said your quarter went up against the wharf, the pier?

A. Our forequarter.

Q. Which, the starboard quarter?

A. The starboard quarter went up against the slip in the bulkhead.

Q. By "quarter" you mean the forward part?

A. Yes, sir.

Q. Against the bulkhead, not against the side of the wharf?

A. No, sir; against the bulkhead.

By Mr. WARD:

Q. When you got in there the fire was raging; was it blazing?

A. Yes, sir.

Q. You attached your hose to what?

A. To the connection on the boat.

58 Q. And drew your water out of the slip?

A. Yes, sir; out of the water.

Q. Were you there when the *New Yorker* came in?

A. I was ashore when the *New Yorker* came in.

Q. Did you see her come in?

A. No, sir; I didn't see her until I heard the crash.

Q. While you were there did the *New Yorker* commence to play on the fire?

A. Afterwards? Oh, yes, sir.

By the COURT:

Q. She of course came in on your port side?

A. Yes, sir.

By Mr. WARD:

Q. How long is the *Havemeyer?*

A. 107 feet over all.

Q. Is she larger or smaller than the *New Yorker?*

A. Smaller.

Q. Do you know what the size of the *New Yorker* is?

A. From what I have heard she is about 120 or 126.

Q. What is the beam of the *Havemeyer?*

A. 22 feet.

Q. When you go to a fire who gives all the orders?

A. The captain of the boat, the foreman.

Q. Where the boat is to go, and how she is to go, and so on?

A. Yes, sir.

Q. But you have nothing to do with the navigation?

A. No, sir.

Cross-examined by counsel for libellant.

By Mr. PUTNAM:

Q. Who remained on your boat in charge of her after you went ashore?
A. The engineer and pilot.
Q. Who was the pilot?
A. Patrick K. Roche.
Q. And he is the man that had charge of the navigation?
A. Yes, sir.
Q. All the way down?
A. Yes, sir.
Q. When you lay in the slip which was nearest, which part of the boat was nearest to pier 48, your bow or stern?
A. My bow, the bow of the boat.
59 Q. That is what you mean by lying cattle-cornered?
A. Yes, sir.
Q. When your stern was lying up towards 49 it went inside of the line of the railroad float, didn't it?
A. No, sir; on the outside of it.
Q. And didn't go astern of the float?
A. No, sir; it went up against the side of the float.

By the COURT:

Q. Your stern starboard quarter lay against the side of the float?
A. Yes, sir.

By Mr. PUTNAM:

Q. That is the width of the float away from pier 49?
A. Yes, sir.
Q. Right up hard against it?
A. Yes, sir.
Q. Did you make a line fast or did the tide hold her there?
A. We made a line fast when we got in.

PATRICK K. ROCHE, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. WARD:

Q. Are you in the employ of the city?
A. Yes, sir.
Q. And have been for how long?
A. Seven years.
Q. In what department?
A. As pilot.
Q. Of what department?
A. Pilot of the *Havemeyer*.
Q. And she is a fire department boat?
A. Yes, sir.
Q. On Sunday, June 11, 1893, were you aboard of the *Havemeyer*?
A. Yes, sir.

Q. As pilot?
A. Yes, sir.
Q. Where were you about three o'clock that afternoon?
A. On the boat.
Q. Did you come down from Grand street?
A. Yes.
Q. State how you came down the river and how you got into the slip.
A. The tide was running flood; we came down in along the docks.
60 Q. In along the docks; what for?
A. To get as much slack water as I could.
Q. What was the object of that?
A. To save as much time as I possibly could in getting to the fire.
Q. When you got to the pier, to the scene of the fire, which was between piers 48 and 49, how did you go into the slip?
A. I run up to see how the slip was open, to see if it was open far enough—there was great deal of room—and I pointed my bow in and sent her ahead.
Q. And then went in?
A. And then went in, stopped and went back, and went ahead again to go as fast as I could get in. The fire was raging very high, and when I got within a few feet I stopped and went back.
Q. Are you familiar with the waters in the harbor of New York?
A. Yes, sir.
Q. When the tide is running flood as it was that afternoon, what is the fact as to any eddies and the strength of them, and the direction of them, in the slip between piers 48 and 49?
A. The tide, flood tide, sets across from Brooklyn shore all the way up on the New York shore and there is a tendency of an ebb tide eddy inside of the docks. Over on the outside of the docks the tide runs very true ebb, or at least flood; there is a slight eddy on the inside on an ebb tide.
Q. What would be the effect of that eddy you speak of, to set a boat down?
A. To set the bow down and stern up; that is the tendency.
Q. You mean on the tide as it was running that afternoon?
A. Yes.
Q. Supposing you had been coming up with the tide and you had to make an entrance into that slip, under the conditions that existed that afternoon, how would you have made that?
A. I would have rounded to and went in full speed and stopped and went back just as soon as my nose entered the slip. Under the circumstances, where I was needed to go there in such a hurry, I would get there as quick as possible, because the fire was raging very high.
61 Q. Do you remember what was in the slip that afternoon?
A. I do, yes, sir.
Q. Have you heard the testimony of the other witnesses?
A. Yes, sir.
Q. Did you hear the testimony of the last witness?
A. Yes.

Q. Did he substantially correctly describe the situation there?
A. Yes, sir.
Q. Do you know how wide that railroad float is?
A. I judge that railroad float is from 40 to 50 feet wide.
Q. Do you know how wide the schooner was?
A. The schooner down at the end of the dock was a light-drafted schooner loaded with hay; she was in the neighborhood of 30 or 35 feet wide I should judge.
Q. How were the railroad float and the schooner lying with reference to the entrance of the slip, near the end of these piers?
A. Yes, sir.
Q. Did you see the *New Yorker* coming that afternoon?
A. I did not.
Q. Why not?
A. Because I was taking care of my own boat at the bulkhead; I had my head out there trying to arrange to give them room to come in after me, I knew they would be there and we would lap on there; and in the mean time the men were all helping to get hose and we had to lie still.
Q. Is the steering gear on the *Havemeyer* steam or hand gear?
A. The steering gear on the *New Yorker* is steam and on the *Havemeyer* by hand.
Q. If the steam steering gear——

Objected to that the witness was not steering the *New Yorker*.

By the COURT:

Q. Have you steered the *New Yorker?*
A. Yes, sir, at one time.

The COURT: He may testify if he has handled it.

By Mr. WARD:

Q. The steering gear of the *New Yorker* is steam, isn't it?
A. Yes, sir.
62 Q. Do you know how this wheel works?
A. Yes, sir. I have steered her once.
Q. With the steering gear on the *New Yorker*, if you leave the wheel alone what will happen?
A. At the time before she was accepted by this department I took a trip in her to Jersey and handled her at the coal dock, and I did leave the steering gear as it was, and went aft and I stayed back there, and it stayed the same. It wouldn't revolve without you touch the small wheel to make it.
Q. Then the steering gear in the *New Yorker* won't operate without steam?
A. At the present time, counsellor, I don't know.
Q. Who gives directions about going to the dock when you go to these fires?
A. From the time we get a station the foreman of the company designates us where to go and we go there as near as we can where he orders us to go; whether we land at the pier or bulkhead it is

optional with him. If he tells me to go to the bulkhead it is my duty to do it and he takes all the risk to do so. We do the best we can to get in there.

Cross-examined by counsel for libellant.

By Mr. PUTNAM:

Q. When did you steer the *New Yorker?*
A. I don't know exactly when, but it was before she was accepted by the fire department.
Q. How many years ago?
A. I should judge three or four years ago.
Q. That was the only occasion?
A. That was the only occasion.

Counsel for respondents offer in evidence a certified copy of the appointment of Mr. Ryan as foreman of engine No. 39.
It is marked Respondents' Exhibit B.

63 PATRICK F. RYAN, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. WARD:

Q. Are you in the employ of the city?
A. Yes.
Q. In what capacity?
A. Foreman of engine company 57.
Q. What is that company 57?
A. The fireboat *New Yorker.*
Q. Did you hold that same rank and perform those same duties in June, 1893?
A. Yes, sir; June 11.
Q. You left the Battery that afternoon with the *New Yorker* to attend the fire, didn't you?
A. Yes, sir.
Q. Will you state what happened from the time you left the Battery up to the time of this alleged collision, as far as you know?
A. We received the alarm at 3.30 or 4.30 I am not sure which; we come up the East river; we see the fire burning between piers 48 and 49 on the corner of Clinton and South streets; I ordered the fireman to go into the slip between both piers, 48 and 49.
Q. Why did you order him to do that?
A. It was necessary for us to go up near the fire to do work, or otherwise it would be no use to go there.
Q. The fire was actually under way, was it?
A. The fire was actually under way and coming out through the roof of the storehouse.
Q. Before you got into the slip did the *New Yorker* come into collision with any pier, bulkhead or anything else?
A. No, sir.
Q. When you got up there who was in the pilot-house?
A. Pilot James A. Gallagher.

Q. Do you know whether or not he was in that pilot-house continuously?

A. I do.

Q. Do you know what was done with the *New Yorker* when she got up there to the slip; was the *Havemeyer* already in the slip?

A. The *Havemeyer* was going in the slip as we got opposite the slip.

Q. Where was the *Havemeyer* when she was going into the slip when you saw her, pier 48 or 49?

64 A. No; she was near pier 48; that is, drifted more on the side of 48, the *Havemeyer* going up in the slip as we got to the slip.

Q. What did you do under those circumstances?

A. The *New Yorker*, she rounded-to, going up with the tide little above 49, so as to swing her stern to clear the float which was lying on the south side of pier 49.

Q. That is the railroad float?

A. That is the railroad float, yes, sir.

Q. How near the end of the dock was that railroad float lying?

A. I would judge, as far as my recollection goes, about five feet; it might be eight feet.

Q. Do you know how wide she is?

A. I judge she was about 40 feet wide. She was one of those double floats.

Q. There was a schooner on the other side of pier 48?

A. Yes, sir.

Q Are you able to state how much clear water there was there between the railroad float and the schooner?

A. I couldn't say, but somewhere about 55 feet.

Q. What happened after that as you went into the slip?

A. I stood on the after part of the *New Yorker*, knowing we would have a pretty tight job to clear the float; I stood there myself with a soft fender—it stood just about the height of our waist; if it struck our waist it would have carried it in. I heard the pilot give four bells, and knowing the engine was about to back I stood there with this soft fender thinking as she backed down she would strike the float, but it cleared the float by about six inches. The headway was so much at the time that it carried the bow of the *New Yorker* under the *Linda Park's* bowsprit—that is, together with the eddy inside of the slip.

Q. Do you know anything about the eddy in that slip?

A. Only what I have seen that day. I am not very well conversant with it; I am some.

Q. Could the *New Yorker* have remained outside of that slip and been of any service in putting out the fire?

A. No, sir.

65 Q. Did you go aboard the barkentine at any time?

A. Yes, sir.

Q. When?

A. It must have been after eight o'clock—that was on the 11th of June; it was dark when I went on board of her, and that is why I

say it must been after eight o'clock. It was too dark for me to make investigation of what damage was done.

Q. Whom did you see when you went aboard?

A. I saw no one.

Q. Didn't you have any conversation with anybody?

A. No, sir.

Q. Have you ever seen that witness who was on the stand before today?

A. No, sir.

Q. When you went aboard you say you saw no one?

A. No, sir.

Q. Then you made no statement to any one?

A. No, sir. It was impossible for me to go aboard before that time.

Q. Did you send anybody aboard before that?

A. No, sir.

Q. Do you know whether anybody who was aboard the *New Yorker* did go aboard the barkentine?

A. No, sir; I do not.

Q. That you don't know?

A. No, sir.

Q. I understood you to say you heard the bells given to the engineer from the pilot-house?

A. Yes, sir.

Q. And how many bells?

A. Four bells.

Q. Are you familiar enough with the bells to know what they meant?

A. Yes.

Q. What did they mean?

A. In this case it was four bells and a jingle, that means she was going ahead under one bell and a jingle, that required four bells to back her, and the jingle to back her hard.

By the COURT:

Q. When those were given where was your boat?

A. Her stern was not quite clear of the end of pier 49, on her way into the slip.

Q. How were you heading as your bow first got inside of the line of the piers?

66 A. We were heading straight, if anything appeared to be little to starboard, that is towards 49, when we entered the slip.

Q. And your stern had just got inside of the end of the pier?

A. I don't think it had got quite inside of the pier; I am not prepared to say that; it got just about inside of the slip when the signals were given, probably not quite.

Q. Up to that time do you say your boat was pointing just about straight up the slip?

A. Yes, at the time the bells were given, but I could notice that the flood tide had caught our stern and was pushing it on the railroad float, and that the eddy inside had caught the bow and was

pushing her to port—that is, towards 48. That was my object in trying to save the boat, by trying to put in a soft fender between the railroad float and the *New Yorker*.

By Mr. WARD:

Q. How many engineers do you carry on your boat?
A. Three.
Q. How many of those engineers are attending to the engine in case of fire, and how many to the fire machinery of the boat?
A. They all assist each other—all do anything they can to help her along; there is only one man does the running and answering the bells.
Q. Who is that?
A. It depends on the man on watch; in this case it was Thompson running the engine—that is, the propeller engine.
Q. Is he here?
A. Yes; and a man named Schramm; he was preparing the hose to go to work.

By the COURT:

Q. How long is the *New Yorker*?
A. 126 feet 5 long.

By Mr. WARD:

Q. And her beam?
A. 26 feet.

By the COURT:

Q. Do you know what the width of the slip is really?
A. No, sir; I do not.
67 Mr. WARD: It is shown on the diagram. It is drawn to a scale, and shows it exactly.

Cross-examined by counsel for libelant.

By Mr. PUTNAM:

Q. How fast does the *New Yorker* go when she is going to a fire in the river?
A. About eleven miles an hour.
Q. And when you get a fire alarm you go full speed, of course?
A. Yes, sir.
Q. Had there been any bells rung to the engineer to slow at all until the four bells you say you heard when you went out there with the fender?
A. Oh, yes; there was several bells given out in the stream as he rounded to. He slacked down as he came to the pier.
Q. You are not a pilot, are you?
A. I am not a pilot; no, sir.
Q. Don't you know four bells are always rung on full speed?
A. No, sir, I do not.

Q. Do you think it had already rung one bell before he sounded the four?

A. It depends what bells were given before to understand the other bells. Do I understand your question right?

Q. Were these four bells all sounded at once, or two and an interval, and two more?

A. No, sir; four bells sounded.

Q. All at once?

A. All at once.

Q. And a jingle right after?

A. Yes, sir.

Q. At the time you heard them where were you standing?

A. On the starboard side, aft.

Q. Pretty near the stern?

A. Pretty near the stern.

Q. Could you tell whether the propeller was going at the time?

A. No, sir; I couldn't tell; I could only tell whether the velocity of the boat had been checked, which I see that it was.

Q. Can't you tell when the propeller is stopped and is backed?

A. Yes, sir.

Q. Did you feel that after the bells?

A. No, sir; it is a heavy boat and you can't feel it.

Q. Did you feel it at all?

68 A. No, sir; it is a heavy boat, you can't feel it, but I know the engine was stopped and started again; it is impossible to tell on deck whether it is put on the forward or back motion.

Q. You knew it was moving?

A. I knew it was moving; yes, sir.

Q. Was it stopped and moving again promptly after the bells?

A. Yes, sir; promptly.

Q. And you were standing with the soft fender at the time it stopped?

A. Yes, sir.

Q. Had they got up then so as to be near the car float when you first felt anything like stopping?

A. No; its headway was pretty well checked.

Q. You don't quite understand me. You felt motions that the engine stopped?

A. Yes.

Q. Were you up to the car float then, or not?

A. We were up to the car float then; yes, sir.

Q. How close to it?

A. The side of the boat was within about six inches of the car float and the outer end of it towards the river was about flush with the stern of the fireboat.

Q. Which was longest, the car float or the fireboat?

A. I think the car float was longest; to the best of my recollection, I think so.

Q. Was anybody else on deck with fenders besides you?

A. Yes, sir; there was some of the men had dropped the wooden oak fenders down on both sides.

Q. Were they attending them?

A. Yes, sir.

Q. How many?

A. There was about six or seven fenders on that side, and the men were busy at that time dropping the fenders down until they had them dropped down, but I stood there with a soft fender.

Q. These fenders that were hard fenders were dropped on both sides of the boat?

A. Yes, sir.

Q. And a man had each of the fenders?

A. No, probably one man could drop them all.

Q. How many constituted the crew on the *New Yorker* all told, counting yourself, that afternoon?

A. There must have been about nine or ten.

Q. How long is the hose of the *New Yorker?*

A. The hose of the *New Yorker*—we carry about 3,000 feet.

Q. And what size hose?

A. From two inches and a half to six inches in diameter.

Q. Can you pump right from the river into that hose?

A. Yes, sir.

Q. And you do that in putting out a fire?

A. Yes, sir; the only way we do it.

Q. You are not dependent on the city water at all?

A. No, sir.

Q. How far was the fire at the corner of Clinton street from the bulkhead?

A. Take the width of the street I would judge that it was probably 85 feet from the bulkhead; it might — been 100 feet.

The diagram referred to is offered in evidence and marked Respondents' Exhibit C.

Counsel for respondents offer in evidence the appointment of Mr. Gallagher as third-grade fireman. It is marked Respondents' Exhibit D.

JAMES A. GALLAGHER, being duly sworn and examined as a witness for the respondents, testifies:

Counsel for respondents offer in evidence a certified copy of special order No. 36. It is marked Respondents' Exhibit E.

Also section 40, chapter 210.

Also reads in evidence sections 264, 265 and 263.

By Mr. WARD:

Q. Are you a licensed pilot?

A. Yes, sir.

Q. How many years have you held your license as pilot?

A. I guess I have my ninth issue now.

Q. That means nine years?

A. Yes, sir.

Q. Are you employed by the city?

A. Yes, sir.

Q. How many years have you been in the employ of the city?
A. Since 1891.
Q. In June, 1891, were you detailed aboard the *New Yorker*?
A. I have been on the *New Yorker* since I have been in the department.
70 Q. On that day were you pilot of the *New Yorker*?
A. Yes, I was.
Q. How long before that had you been pilot?
A. Since February, 1891.
Q. You left pier A on the afternoon of June 11, to go to a fire between piers 48 and 49, did you not?

The COURT: They all agree he was going right in the slip straight.

Q. As you came up from pier 8 to go into this slip, state what happened and how you got into the slip?
A. We left the Battery about 4.30 and came up on the flood tide and hauled over for Brooklyn.
Q. What did you do that for?
A. To give ourselves room enough to round-to and go in the slip. When I rounded-to for New York shore and was hauling over—
Q. When you rounded-to, were you above or below pier 49?
A. Above when I rounded-to. I was above when I began to round-to, but I was below after I got rounded-to. I slowed down and stopped—then we were just below 49—so as to give the *Havemeyer* a show to get in out of our way.
Q. Where was the *Havemeyer* when you got up there?
A. She was right in the mouth of the slip.
Q. After you slowed——

By the COURT:

Q. At that time were you heading in a line with the piers or crosswise?
A. We were heading down the river, against the tide.
Q. Do you mean straight down or how?
A. On a line with the piers, just kept her stem to the tide, of course. It doesn't run exactly east and west there, I don't think.

By Mr. WARD:

Q. Go on and state how you got in, and why?
A. When the *Havemeyer* got in out of the road I rung the bell to go ahead and throwed my wheel to port so as to quarter in, go in quartering on.
Q. Why did you have to do that?
71 A. On account of the tide; I had to do that to give the swing on the stern and swing against the tide. The tide kept setting her down and I rung a jingle bell to hook her up, and I rolled my wheel hard-aport and kept it that way until we were, I guess, little over half ways in the slip, and I see the tide caught her bow and picked her up, and I see she wouldn't come for me or mind the helm, and I rung four bells and a jingle bell to go back.

Q. And then what happened?

A. We went in under the loom of the bark that lay at the dock, a small bark.

Q. Before you started to go in the slip you noticed what was in the slip, didn't you?

A. I did, yes, sir.

Q. You have heard the other witnesses testify as to the situation of the vessels in there?

A. I did, yes, sir.

Q. What was in the slip?

A. There was a bark laying there that we hit, that laid at 48; outside of her laid a barge, a square barge; and on the end of 48 laid a schooner lying very close on the end of the dock, her stern, I think, she laid bow in if I ain't mistaken; and on the opposite side on the end of 49 there was a railroad float; and in towards the bulkhead——

Q. And the railroad float, with reference to the water line of the piers, was lying how close up to it?

A. I should judge about five or ten feet in from the end of the piers. Then there was a small lighter laid in on 49, at the stern—or towards the bulkhead—of the railroad float, a small sailing lighter.

Q. Was the method you took of getting into the slip governed by the situation of these vessels in the slip?

A. Yes, oh, yes, sir.

Q. Was there any time that you left the pilot-house before the collision?

A. Before the collision?

Q. Before you struck the barge?

A. No, sir.

Q. What is the steering gear of the *New Yorker?*

A. It is steam and hand gear.

Q. Which gear were you using on this afternoon?

A. Steam gear.

72 Q. What is the fact in reference to the steam gear on the *New Yorker?* if you take your hand off the wheel or leave the wheel, what will happen?

A. The wheel will stand still.

Q. Where is the entrance to the pilot-house on the *New Yorker?*

A. The after part, right forward of the smokestack.

Q. Are there any side entrances to the pilot-house?

A. No, sir.

Q. How is the pilot-house, surrounded with windows or how are the windows situated?

A. Our pilot-house is square and there is windows all around, even in the door.

Q. After you struck or came into collision with the barkentine what did you do?

A. Went back from under her bow and went up in the slip alongside of the *Havemeyer.*

Q. And then commenced to play on the fire?

A. The barge had to haul there, haul down alongside of the *Linda*

Park to let us get in between the *Havemeyer* and the *Havemeyer* shifted back a little bit to let us get in. We shoved her head around when we squeezed in between her and the barge.

Q. Whom do you get your orders from?

A. From the captain of the boat.

Q. What orders did you get that afternoon?

A. I got orders to go in between 48 and 49.

Q. Where did you get those orders?

A. From Capt. Ryan.

Q. Where, what time?

A. On the boat, about I guess——

Q. What I mean is how long before you went into the slip did you get the orders to go in that slip?

A. When we were rounding-to.

Q. Did you go aboard the barkentine at any time after this collision?

A. I did, yes, sir.

Q. When?

A. After we were made fast and playing on the fire.

Q. Do you mean that is the same afternoon?

A. The same afternoon about half an hour——

Q. Whom did you see aboard the barkentine?

A. I saw the mate.

73 Q. Did you see *this* man?

A. No, sir.

Q. Did you see him?

A. No, sir.

Q. Was he on the barkentine at all when you went aboard?

A. He was not.

Q. So far as you know?

A. He was not.

Q. Did you have any conversation with the mate?

A. I did.

Q. Was he standing next to him?

A. No, he was not, the steward was alongside of him.

Q. But not *this* man?

A. Nobody.

Q. Did you make any statement to the mate——

Mr. PUTNAM: Ask what he said, what the conversation was.

The COURT: He is entitled to contradict the other man if he wishes.

Q. The mate testified: Q. "Did he talk to you? A. Yes; he said it was the engineer's fault, he gave the engineer the bell and the engineer didn't answer." Did you make any such statement?

A. No, I did not.

"Q. Did he say anything else? A. No, he only said the city of New York had plenty of money and would pay for it." Did you make that statement?

A. No, I did not.

Q. When you went aboard there and saw the captain what did you say?

A. I didn't see the captain.

Q. Or the mate; what did you say?

A. It was him that done the talking.

Q. What did he say?

A. He wanted to know who the boat belonged to. I went aboard the boat to see what damage was done and he says to me, he says, "Who does that boat belong to; does she belong to a corporation"? I said, "Yes, she belongs to the city of New York." I says to him, "Was there much damage done"? "Oh no," he said; "there ain't much, only the braces were carried away." And I told him that I would see if I couldn't get the repair shop people to come and take the braces and straighten them and put them back in their places. By and by, after, he sung out to me from the boat that the boom was punctured; and he said the captain was ashore, he didn't know whether to take the boom out or not.

74 Q. You are familiar with the course of tide and eddies around the piers in New York slips?

A. I am. Yes.

Q. What is the fact as to any existing eddy between pier 48 and 49 in the East river?

A. On what tide?

Q. On the flood tide that you came up on?

A. The tide sets down, inside of the piers the tide sets down; outside of course it sets up.

Q. And did you endeavor to get into the slip with the knowledge of that fact?

A. I did, yes, sir.

Q. And governed yourself accordingly?

A. I did, yes, sir.

Q. Do you know of any precaution that could have been taken by you as pilot of that boat to avoid this collision, that was not taken?

A. No, I do not.

Q. Was the collision, in your judgment, to be avoided if you went into the slip under the then existing conditions?

A. No, it was not.

Cross-examined by counsel for libellant.

By Mr. PUTNAM:

Q. You say when you went up there the *Havemeyer* was then at the entrance of the slip?

A. At the mouth of the slip.

Q. And you went in as soon as she had got past and gone in, didn't you?

A. As soon as I got room enough to go in, yes, sir.

Q. How long do you think, it was after she went in that you followed her?

A. She wasn't made fast to the bulkhead when we went in after her.

Q. Was there any change in the eddy or tide during that little time?

A. No, sir, there was not, not that I know of.

Q. Did you expect to have any difficulty going in after seeing her go in?

A. I did, yes, sir.

Q. Have you been in that slip before?

A. I was, yes, sir.

Q. With the *New Yorker?*

A. I believe I was.

Q. When?

A. I think it was about a year ago.

Q. Did you have any trouble then?

A. No; had a clear slip.

75 Q. Didn't collide with any vessel at that time?

A. No vessel in there to collide with.

Q. What did you say the length of the *New Yorker* is?

A. 126 feet.

Q. When you were first in the fire department you were a fireman of the third grade, according to this paper; what was that?

A. I was pilot as soon as I went in the fire department; that was only an appointment in the uniform force.

Q. What were your duties as fireman of the third grade?

A. To steer the fireboat *New Yorker.*

Q. And you were acting as pilot then?

A. I was; yes, sir.

Q. Before you were designated by the fire commissioners as pilot?

A. Yes, sir.

Q. And you made no difference before or after; that is, you acted as pilot all the time?

A. All the time; yes.

Q. When were you first acting as pilot on the *New Yorker?*

A. It was the day after her trial trip.

Q. When was that?

A. That was in—some time in February, 1891.

Q. And you have been pilot ever since, have you?

A. Yes, sir.

Q. Did you ever have a collision with her before?

A. I did; yes, sir.

Q. When?

A. Had my rail carried down—at the time the *City of Richmond* was burned—on the corner of a railroad float, the same way this occurred.

Q. The same place as this?

A. No, pier 24, East river. I said in the same way.

Q. As a matter of fact you attend wholly to the navigation of the boat, do you?

A. I do; yes, sir.

Q. You give all the orders, and ring the bells, and give the signals?

A. No, sir; I do not; I don't give orders at all. I ring bells, but I don't give no orders only in case of putting out a line.

Q. Don't you give orders about putting out a fender?

A. I do about putting out a fender, yes, sir.

76 Q. Any orders about going into a slip in respect to the speed of the vessel, or the steering of the vessel, are by you, are they not?

A. Yes, sir.

Q. How do you account for it that the *Havemeyer* went in and went clear of all these vessels and that you collided with the second vessel?

A. She is a different-handling boat from us.

Q. A smaller boat?

A. She handles different.

Q. She has hand steering and you have steam?

A. Yes, but she handles different anyway.

Q. Isn't steam gear a good deal better to handle a ship than hand gear?

A. It is providing you have got a rudder to handle them with.

Q. Wasn't it the fact that you rang four bells all at once just before the collision?

A. Yes, it was.

Q. And a jingle bell too.

A. Yes, sir.

Q. And how close were you to the bark when you did that?

A. I should judge we were at least about half a length away, not quite; I couldn't exactly say.

Q. Half a length of the fireboat do you mean, or half a length of the bark?

A. Half the length of the fireboat. We were half ways in the slip, about.

Q. Do you mean half way from the outer end of the bulkhead?

A. The centre of our boat was just about in the slip and there was about——

Q. The centre of the boat was about even with the outer end of the pier?

A. Yes, sir.

By the COURT:

Q. At what time?

A. When I rung the four bells; there was about half a length between us and the bark.

Q. So the outer half of your boat was outside of the slip?

A. Was outside of the slip and swinging up the river.

Q. Which was swinging up, your stern?

A. Our stern; and when she picked up and got inside—on the centre of the true tides she picked up, and that is the time I rung the four bells and the jingle bell.

Q. You said before you started up you were heading straight down the river?

A. That is before I went in the slip.

77 Q. You swung around through the westward, didn't you?

A. No, sir, we went to the northward. Yes, we were heading to the westward.

Q. You swung around head to the westward in order to get in the slip?

A. We were heading to the westward and swung to the north.

Q. Straight down the river isn't west?

A. About southwest, I guess.

Q. You went around that way?

—. ——.

By Mr. PUTNAM:

Q. Didn't you say you went around under a port helm?

The COURT: That would be right.

A. Yes, sir.

Q. And how far were you outside of the slip when you started to swing around to go in?

A. A length and a half.

Q. And were you then opposite 48 or 49?

A. 48.

Q. And you put your wheel aport to get in?

A. Yes, sir.

Q. When did you first change the wheel again?

A. When did I change it?

Q. After putting it aport when did you change it next?

A. I didn't change it at all.

Q. Kept it aport all the time?

A. Not until I backed out from under her bow.

Q. You had it aport all the time until the collision; is that right?

A. Yes, sir.

Q. Hard-aport?

A. Yes, sir.

Q. Did you strike either with the stem or the side anything else before you struck the bark?

A. I think not.

Q. Didn't you come in contact with the end of 49?

A. No, sir; I did not.

Q. Didn't you order fenders put out?

A. No, sir; only on the side fenders dropped down.

Q. Were not the starboard-side fenders out when you came up to 49?

A. The starboard-side fenders? I guess they were, I can't say for sure whether they were all down or not; I know the port-side fenders were down.

Q. What bells did you ring when you first started?

78 By the COURT:

Q. Did I understand you kept your wheel to port, hard-aport, all the time from the time you started up to get around so as to head into the slip until you struck this bark?

A. Yes, sir.

Q. When your bow got at the entrance of this slip, how far away were you from pier 49 and from the float, I mean below it; when your nose got up just in a line with pier 49, how far were you below pier 49?

A. Very near on a line with the stern of the schooner, or the starboard side of the schooner and on 48, so we came down and quartered in on her.

Q. How were you heading at the time your nose got up on a line with the end of the piers?

A. Do you mean on going in the slip or out in the river?

Q. Yes; when you got up so far your stem was just ready to go inside of the pier lines, what was the direction of your boat?

A. We were heading for the bulkhead.

Q. Were you heading across the slip to the north, or to the south, or how?

A. We were heading to the north.

Q. Heading somewhat towards pier 49?

A. Not exactly; no, sir; we were hauling that way, for pier 49, as we were going in, kept hauling around as we were going in.

Q. And you say then that your boat was nearly, your stem, down nearly as far as pier 48 when you got up to the line of the piers?

A. Almost on a line; not exactly on a line, because I made my calculation when I would go in there I would go in as close to 48 as possible and haul her down for the railroad float, so if she should pick up she wouldn't pick up as quick as what she would if we went right straight in.

By Mr. PUTNAM:

Q. Did you make any report of this collision to the inspectors?

A. I did; yes, sir.

Q. Right afterwards, did you?

A. I believe I did; yes, sir.

Counsel for respondents produces the report.

79 By the COURT:

Q. I understand you when you got as far as the end of the slip your boat was then heading a little up, a little across the slip towards pier 49?

A. No, sir; our stern was more towards pier 49 and our bow more towards pier 48.

Q. Then you hadn't got swung around yet?

A. No, we wasn't exactly straight.

Q. You think at that time your bow was nearly in line with the schooner?

A. Pretty near it; yes, sir.

Q. Didn't the schooner come very nearly out to the end of the pier?

A. Very near. Her stern, I believe, was out very near the end of the pier; about ten feet away.

Q. At that time, I understood you to say before, that your engines were moving ahead full speed?

A. They were; yes, sir; but my boat wasn't moving full speed.

Q. Your engines were moving at full speed?

A. Yes, sir.

Q. Nearly in line with the side of the schooner, not far away from her and heading towards the schooner?

A. More in the middle of the slip; we were heading towards the schooner; yes, sir.

By Mr. PUTNAM:

Q. Did you have a talk with any one else on board the bark that night except the mate?

A. No; I did not.

Q. Did you know of the name of anybody else there except the mate?

A. On the ship? No, sir.

Q. How do you know whether a man was a steward or what he was, that you say was there?

A. Because I could see his apron on and his sleeves rolled up.

Q. That is the only man you saw there at the time?

A. That is the only man I saw at the time; yes, sir.

Q. What time do you say that was?

A. About an hour after the collision.

Q. Will you swear you didn't state to the mate that it was the engineer's fault?

A. I will; yes, sir.

Q. You did not so state?

A. I did not; no, sir.

80 Q. As far as you could judge, the engineer answered the bells promptly?

A. From what he says he did; yes, sir.

Q. Couldn't you tell in the pilot-house whether he answered them promptly?

A. No, sir; I could not.

Q. Isn't there a return tube from the pilot-house down to the engine-room?

A. Yes, sir.

Q. Can't you hear what goes on?

A. No, sir; I cannot, without he talks to me.

Q. Did you talk through it?

A. No, sir; I did not.

Q. Didn't you speak through it at all?

A. No, sir; I didn't speak through it at all.

Q. Simply rang the bell?

A. Yes, sir.

Q. Isn't it a fact that you went out of the pilot-house before the collision?

A. Before the collision? No, sir, I did not.

Q. Isn't it the fact that the front of the pilot-house was struck by some part of the vessel?

A. Yes, sir.

Q. Didn't you run out?

A. No, sir.

Q. You are as positive of that as of anything you have testified?

A. Yes, sir.

Q. You stayed in the pilot-house all the time?

A. The rules and regulations got broke on my head when the pilot-house got broke.

Q. That is the first time you broke the rules and regulations?

A. That is the first time the rules of the road, yes, sir.

Q. Which was the schooner heading, bow out or stern out?

A. I think she was heading bow in.

Q. Had you rung any bells to the engine-room from the time you turned around out in the river to go in until you got inside of the slip, as you have stated, and rang four bells?

A. Had I rung any?

Q. Between those times.

A. Between the four bells and the time I rung the jingle bell to go ahead?

Q. When you were out of the slip heading head down the river you rang the bell to go ahead, didn't you?

A. Yes, sir.

Q. And then rang a bell to go full speed?

A. Jingle bell, yes, sir.

81 Q. Did you ring any other bells before the collision?

A. No, sir; I did not.

Q. Isn't four bells the usual signal for full speed when you want to stop and reverse?

A. If you are going ahead full speed it is to go full speed back.

Q. And the jingle is to back her strong?

A. To back her hard; yes, sir.

Q. How close do you say the bow of the *New Yorker* was to this bark when you first rang those four bells?

A. About half the length of the *New Yorker*.

Q. That is, about 50 or 60 feet?

A. Somewheres along there.

Q. After the collision how did you get clear of the *Linda Park*?

A. Backed out.

Q. How was the helm then?

A. The helm was to port.

Q. Still to port, was it?

A. Yes, sir.

Q. And how far did you have to back to get clear?

A. About 15 feet.

Q. How did you go then?

A. Rung a bell to go ahead and went up in the slip.

Q. You went right up to the bulkhead, did you?
A. I did; went in between the *Havemeyer* and the barge, up to the bulkhead.
Q. Had no trouble?
A. No, sir; only the barge had to haul out of our road.
Q. How close did you come to the *Havemeyer?*
A. Right alongside of her.
Q. With your stem to the bulkhead the same as hers was?
A. Yes, sir.

By the COURT:

Q. Were you ahead of the lighter that lay alongside of the bark, your boat, or did your stern lap that boat?
A. Her bow lapped on our side.
Q. The lighter's bow?
A. The lighter that laid alongside of the *Linda Park*, her bow laid on our rail.
Q. Lapped it a little?
A. Lapped it, so we had to put a fender in there to keep it from chafing the rail, and we both laid catte-cornered across the slip.

82 By Mr. WARD:

Q. I wish you would take this diagram (Exhibit C) and show what course you took after you got up here, from the time you saw the *Havemeyer*, to go in; indicate the course you took, using that model.
A. (The witness does as requested.)

By Mr. PUTNAM:

Q. You hooked up, you say, because you were afraid you were going to hit the end of 49?
A. Yes, and to give her a swing.
Q. And for fear you might strike and take the side out?
A. Yes.

By Mr. WARD:

Q. On what?
A. On the outer corner of that railroad float and the slip.
Q. In coming up did you run into pier 49 with the *New Yorker?*
A. No, sir.

The extract from the minutes of the board of fire commissioners appointing Frederick Thompson fireman of the third grade, and engineer of the steamer *New Yorker*, is offered in evidence and marked Respondents' Exhibit F.

FREDERICK THOMPSON, being duly sworn and examined as a witness for the respondent-, testifies:

By Mr. WARD:

Q. Are you in the employ of the city?
A. Yes.

Q. And of the fire department?
A. Yes, sir.
Q. Assigned to what fire company?
A. Engine company 57.
Q. That engine company is what?
A. That is the fireboat *New Yorker*.
Q. You have been on the *New Yorker* for how long?
A. I have been there since the 1st of February, 1891.
Q. You have been an engineer since 1891 on the fireboat *New Yorker?*
A. Yes, sir.
83 Q. How many engineers are there aboard the *New Yorker?*
A. Three.
Q. Were you aboard of her on the 11th of June, 1893?
A. Yes, sir.
Q. You remember going down to between piers 47 and 48?
A. Yes, sir.
Q. Were you taking the bells from the pilot-house that day?
A. I was.
Q. Did you get any bells immediately before the collision?
A. Yes.
Q. What bells did you get?
A. I got four bells and a jingle.
Q. And that signifies what?
A. To go astern full speed.
Q. Did you answer the bells?
A. Yes, promptly; very promptly.
Q. Did the engines answer promptly, too?
A. Yes, sir.
Q. The engines were in good order?
A. Yes, sir.
Q. How long a time had elapsed between the time you got those four bells and the jingle and the last signal you got from the pilot-house before that?
A. Oh, probably a minute or a minute and a half.
Q. And what was the signal that you doubtless got from the pilot-house before these four bells?
A. Before these four bells? To stop.
Q. And that is what?
A. One bell.
Q. And you obeyed that promptly?
—. Yes, sir.
Q. After you got your four bells and your jingle, how long a time elapsed before you got any other signal from the pilot-house?
—. Oh, I couldn't say. I couldn't say exactly to the time. We moved around quite some there in the slip before we got in position alongside of the *Havemeyer*.
Q. During that time you kept getting signals; is that the idea?
A. Yes; kept working the boat, and I couldn't specify the time exactly.
Q. Did you see the collision?

A. No, sir.
Q. Where was your engine-house on the *New Yorker*, below decks?
A. Below decks, yes, sir. The engineer cannot see anything on deck.
84 Q. Did you come up out of that engine-house?
A. No, sir; I did not.

Cross-examined by counsel for libelant.

By Mr. PUTNAM:

Q. You were chief engineer of the boat?
A. I am assistant engineer; my papers calls for that, my certificate from the local inspectors.
Q. Who was chief engineer?
A. There he is there.
Q. Was he on board at the time?
A. Yes, sir.
Q. Was he in the engine-room at the time?
A. I couldn't say.
Q. Was there any one in the engine-room with you at the time?
A. I couldn't say that.
Q. Don't you recollect?
A. There might been in the engine-room and on the opposite side of the engine and I couldn't see them.
Q. You don't remember seeing any one?
A. They passed to and fro at the time, everything was all excitement.
Q. Don't you have charge of getting the engine ready to work the fire-pumps too?
A. That don't make any difference either way.
Q. Does the same engineer have charge of both the propelling machinery and the fire-pumps?
A. Yes, sir.
Q. Had you got the pumps ready to operate whenever the hose was connected?
A. No, I was operating the main engine, the propelling engine.
Q. Were the pumps also ready?
A. They were, yes.
Q. Who had charge of connecting the hose?
A. The men on deck.
Q. They have a separate engine for the pumps besides the one that is propelling the ship, don't they?
A. Yes, sir; two distinct engines.
Q. They are in the same room?
A. They are in the same room.
Q. Who was doing anything to that besides you?
A. To what?
85 Q. To the pumping engines?
A. To the pumping engines? Another engineer.
Q. Who was he?
A. Mr. Schramm.

Q. Was he in there?
A. He was there at the time, but he wasn't there just at that moment, I couldn't say; but he was in and around there and all over the boat.
Q. Who was the superior, you or Mr. Schramm?
A. Mr. Schramm was superior.
Q. Is he the chief?
A. He is the chief engineer.
Q. You have already stated you couldn't tell whether the chief was there or not at that time?
A. He was aboard the boat.
Q. But whether he was in the engine-room or not?
A. That I couldn't say.
Q. As matter of fact when you were in the engine-room you have charge of all the engines in the room, while you are there?
A. Yes, sir.
Q. And you did on this occasion?
A. Yes, sir.
Q. Coming up the river she was hooked up, wasn't she?
A. Yes, sir.
Q. Full speed?
A. Yes, sir.
Q. Then you got bells to stop?
A. Yes, sir.
Q. And you remained stopped some time?
A. We got a bell to slow down?
Q. Did you get a bell to stop?
A. Got a bell to slow down and another bell to stop?
Q. When was that?
A. I couldn't say what time it was.
Q. Do you know how long it was that your engine was stopped, not turning?
A. I should judge couple minutes.
Q. What was the next bell you got after that?
A. Got a bell to go ahead.
Q. And was that one bell or two?
A. That was one bell to go ahead.
Q. Do you know where the boat was at that time?
A. I couldn't tell.
Q. Did you get a bell also to hook her up?
A. Yes, sir.
86 Q. How long was that after the bell to go ahead?
A. Oh, it was right on top of it.
Q. And then from that time you did hook her up?
A. I did.
Q. How many pounds of steam did you have on at that time?
A. 95 or 100.
Q. Full pressure?
A. Yes, sir.
Q. And you went hooked up until you got the four bells to stop and back?

A. Yes, sir.

Q. That was how long a time, do you think?

A. It couldn't been over two minutes; just long enough for a boat to enter her slip, I suppose; that is about all.

Q. Did you feel the blow of the collision?

A. No, sir.

Q. Or hear any crash?

A. No, sir.

Q. You didn't know exactly when it occurred?

A. I couldn't say anything at all about the collision.

Q. Did you hear any hails from outside the engine-room door while you were in the engine-room?

A. No, sir.

Q. From anybody?

A. No, sir; the engine-room is below decks.

Q. Did you hear anything from Mr. Schramm?

A. No, sir.

Q. When was he last in the engine-room, to your knowledge, before the collision?

A. Just about, I should judge, when we were off the end of pier 48 or pier 49.

Q. You said there was a good deal of excitement in the engine-room; what did you mean by that?

A. I didn't say in the engine-room. I said about the boat in general.

Q. Could you tell what was going on about the boat; did you hear any talk up above?

A. No, sir.

Q. What did you hear?

A. You could hear men running back and forth and one thing and another, getting lines ready to go ashore and all that kind of thing.

Q. There is no excitement about that, is there; that is a
87 usual thing for a boat coming to a wharf—getting lines ready?

A. I mean the lines of hose going ashore to extinguish the fire.

Q. That is a usual thing on your boat, isn't it?

A. Well, sometimes.

Q. Is that all you meant by saying there was good deal excitement?

A. No. But everybody had enough to do to attend to their own business, whatever duty they were to perform.

Q. Isn't it the fact you had as part of your own business two engines to look after at that time?

A. No, sir, I did not.

Q. Haven't you said that when you are in the engine-room you have charge of both the engines there?

A. Yes, if I happen to be there I have.

Q. And you were there?

A. Yes, sir; if I was there alone I would have charge of everything in there.

Q. Do you know whether the hose had been coupled on?
A. I couldn't say.
Q. Had the pumps been tried to see whether they were in working order?
A. They are tried every week.
Q. Had they been tried there at that time?
A. It is not necessary to try them.
Q. Had they been?
A. No, sir.
Q. Had the pumping engines been warmed up any to see whether they could work?
A. Yes, they had.
Q. When was that done?
A. When was that done? In coming up the river where we could see the fire.
Q. And you had done that, hadn't you?
A. No, sir; I didn't do that. Mr. Schramm did that.
Q. And they had been started?
A. Yes, sir; they had been turned over.
Q. Were they working at the time you went in the slip?
A. They were slowly turning over, very slowly.
Q. So as to be ready to pump?
A. As soon as we were made fast.
Q. How long had they been turning over?
A. Probably five minutes.
88 Q. When you start the pumping engines don't you begin very slow and then gradually let little more steam in them as the cylinder gets warm?
A. Yes, that is the case in most engines.
Q. And that was the case this time?
A. Yes, sir.
Q. But after Mr. Schramm started them he went out didn't he?
A. Yes.
Q. Where did he go?
A. I don't know where he went exactly.
Q. He was in some part of the boat?
A. Yes, sir.
Q. Didn't you let steam into the pumps after he went out?
A. No, sir, I did not.
Q. You are quite positive of that?
A. I am quite positive about that.
Q. Who did do that? After Mr. Schramm went out was there anybody there but you?
A. Yes. He came back.
Q. When did he come back, before the collision?
A. No, sir; I didn't see him.
Q. Did you get any bells that you can recollect right after these four and the jingle?
A. Did I get any after the four?
Q. That you can recollect now?
A. That I can recollect now? We got quite a number after that.

Q. Can you remember what the next bells were that you got after the four bells and the jingle—you say you don't know anything about the collision?

A. No, sir, I don't.

Q. What was the next bell you got after the four bells and jingle?

A. I got a bell to go ahead again.

Q. One bell?

A. Yes, sir.

Q. Did you get any other bell that you recollect?

A. Yes; I got quite a number.

Q. But I mean the next two orders after the four, can you recollect what they were?

A. The next two?

Q. The first was to go ahead.

A. To go ahead.

Q. What was the next?

A. A bell to stop again.

Q. Did you ever get a bell to back after those four and the jingle?

A. I might have, to get her in position, in the right position alongside of the *Havemeyer*.

89 By Mr. WARD:

Q. When you speak of two engines what two do you speak of?

A. The propelling engine of the boat and pumping engines are two distinct engines.

Q. Does the same man have charge of the pumping engine and the fire engine?

A. The propelling engine you mean? Yes, if that man happens to be there at that time.

ERNEST F. SCHRAMM, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. WARD:

Q. Are you in the employ of the city of New York?

A. Yes.

Q. In what capacity?

A. As engineer on the fireboat *New Yorker*.

Q. How long have you been such engineer?

A. Since the boat was organized.

Q. When was that?

A. February 1st, 1891.

Q. And were you aboard of her on the 11th of June, 1893?

A. Yes, sir.

Q. What are you—chief engineer?

A. Yes.

Q. Are you responsible for the engine-room?

A. Yes; when I am there.

Q. Whom did you have there that day with you?

A. Mr. Thompson.

Q. Did you detail him to any specific work?

A. That was his watch that day.

Q. Is there any particular duty goes with any particular watch?

A. I was in the act of going to my supper when the alarm came in; instead of going to my supper I went to the fire. That was his watch on and he took the engine, being he reached there before I did. It has always been the rule there, whoever's watch it was he would handle the engine going out to the fire.

Q. To save time is that?

A. That is to save time, and being it is his watch, it is his place.

90 Q. Did you take any part in working the engines, either the engines of the boat or the fire engines, on this afternoon?

A. I didn't touch the propelling engine that day at all.

Q. What did you touch?

A. I started the fire pumps—two set of them.

Q. You took charge of the fire pumps?

A. I started them, warmed them up, and let them turn over slow. I see the fire was coming through the roof and I knew I was going towards that, and of course I got ready to throw water.

Q. Did you have any other duty in connection with getting ready to throw water except turning over of the engines?

A. I had to run back and forth to the fire-room; fill up the water in the boiler and seeing the stokers were doing their best to get the steam up to the highest point, for I knew we were going to get all we wanted in a little while.

Q. Were you in the engine-room at any time when bells were given?

A. Yes.

Q. What bells did you hear given?

A. I didn't pay no attention. I was busy running back and forth from the fire-room to the engine, starting the fire pumps and fitting the boiler, and so forth, and directing the stokers, and I didn't pay no attention to the bells.

Q. Did you see the collision?

A. No, sir.

Q. Where were you at the time of the collision?

A. I was in the act of coming up the engine-room steps to go on deck when I felt the shock.

Q. Were you on deck at any time while they were going into the slip?

A. No, sir; immediately after the collision I was.

Q. Where were you when you were last on deck before you went in the slip—where was the *New Yorker?*

A. That I really couldn't say, because—we might have been at 47. I could see the fire you might say two blocks ahead; I think it might — been two or three piers below the fire.

Q. Did you have the same fires in the engine-room on this day you usually have on the *New Yorker?*

91 A. Yes; we were one man short, but sometimes we have got to have them that way.

Q. That didn't interfere with working the engines?
A. No, sir.

Cross-examined by counsel for libelant.

By Mr. PUTNAM:

Q. Who was the man short?
A. One of my side partners; an engineer, too.
Q. What is his name?
A. Al. Burtis.
Q. Is he assistant engineer?
A. He is assistant engineer also; yes, sir.
Q. What is he, first assistant or second?
A. Second, you might call him. He is the last on the list, the last man appointed.
Q. How many engineers are there regularly attached to your fire company, or to the boat *New Yorker?*
A. Three, including myself.
Q. On this occasion you had only two?
A. I had one besides myself.
Q. Did you attend to the pumping engine except to turn the steam onto them at first?
A. I turned the water over and everything else.
Q. The pumping engines, you were the first one that opened the valve to connect?
A. That day; yes, sir.
Q. And you went out to see to the stokers to get up as good fire as you could?
A. Yes, sir.
Q. You have often pumped water on fires with that boat?
A. Yes.
Q. And you have to have your full head of steam?
A. Not necessarily; we could do good with less.
Q. Do you ever use the full length of hose?
A. What do you mean by the full length?
Q. I understand you have several thousand feet.
A. We never use them all in one straight line.
Q. But you sometimes use two lines out at once?
A. Oh, we use as many as twelve at one time.
Q. No difficulty to have them run two or three hundred feet, is there?
A. The further the stretch the worse the result.

Q. You said that at the time of the collision you were
92 coming up the steps?

A. I was in the act of coming up the engine-room stairs.
Q. On which side?
A. On the starboard side.
Q. Could you see anything then?
A. Not then. I felt the collision before my head cleared the deck.
Q. Where did you go then?

A. I stood out for a minute, right out on the trunk deck, and really didn't feel a shock. It was something, I didn't know quite, attracted my attention. I looked around and see that our bow was afoul of the bowsprit of a bark which afterwards turned out to be the *Linda Park*.

Q. When you say trunk deck what do you mean?

A. A little house above the main deck is what we call the trunk deck.

Q. That is the deck aft of the pilot-house?

A. Yes, sir.

Q. And when you are there you can see both sides of the boat, can't you?

A. Pretty near—that is, as far as the pilot-house; of course the pilot-house obstructs the view little bit.

Q. As you came up from the stairway leading below, do you remember whether you came up and turned on the port side or starboard side?

A. I turned to port.

Q. That is towards the bark?

A. Yes, sir.

Q. And you were standing right there at the time of the collision?

A. No, sir; this was after the collision I got on deck, because while in the act of going up the stairs the shock of the boat striking something—I don't know, I felt kind of a graze like, I felt it and it kind of made a sliding motion to me.

Q. Was there any call for you to come up?

A. No more than I wanted to see if we wasn't pretty near there to get ready to start the water for them.

By the COURT:

Q. Put the models to show how the boat was heading at the time you saw it afoul of the *Linda Park's* bowsprit.

(A. The witness does as requested.)

The COURT: That is at an angle of about four points towards pier 48.

93 By Mr. PUTNAM:

Q. Where did you go right after that?

A. I went up forward to help clear away that martingale and side stays and one thing and another.

Q. There was damage to the pilot-house?

A. There was damage to the pilot-house a little, the front awning was torn.

Q. The front of it broken in?

A. Yes, sir.

Q. You are quite sure you didn't hear any hails to come up?

A. No, sir.

Q. Just mere accident you happened to be——

A. That is all; I came up to see if we was nearing the slip.

Q. Where did you come from when you came up the stairs?

A. From the engine room.

Q. You just came from the stokers?

A. No; I had been in the engine-room starting the pumps and getting ready, and I looked at the water in the boilers and thought it was pretty near time to see where we were.

Q. Whom did you see in the engine-room when you came up?

A. Engineer Thompson working the engine.

Q. Had you noticed those four bells?

A. I couldn't say; no, sir; I didn't pay no attention.

Q. Isn't it a fact that four bells and a jingle to an engineer would arouse his attention?

A. Not in our business.

Q. Did you go aboard the *Linda Park* after the collision?

A. I did next day by request of our captain to see what damage was done.

Q. You mean by the request of the captain of the company?

A. Of the *New Yorker*, yes, sir.

Q. To examine the damage?

A. Yes, sir. I think it was the next day.

Q. Are you sure it was not that night?

A. I am sure it was not that night.

Q. Did you have any talk at that time?

A. No, sir; I was too busy to go anywheres.

Q. When you did go aboard the vessel, did you have any talk with the people?

A. No, sir.

Q. You looked at the damage and made a report?

A. Verified the captain's statement, that is all.

94 JOHN R. SHIELDS, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. WARD:

Q. Are you in the employ of the city of New York?

A. Yes, sir.

Q. In what capacity?

A. Assistant secretary of the fire department.

Q. How long have you been assistant secretary?

A. Have been assistant secretary for about two years now.

Q. Are you familiar with the method of doing business and carrying the different credits and accounts of the department?

A. Generally, yes, sir.

Q. Has the fire department any fund which is subject to the control of the head of the fire department so that they can pay out or as matter of fact do pay out over the vouchers of the head of that department?

A. The fire department has no control of any funds other than the relief fund.

Cross-examined by counsel for libellant.

By Mr. PUTNAM:

Q. How are payments audited that are required by your department?

A. Upon bills approved by the board of fire commissioners; transmitted to the finance department and paid.

Q. And on their auditing where are the bills sent?

A. Sent to the finance department by the board of fire commissioners.

Q. To the finance department of the city?

A. Yes, sir.

Q. And they are paid like any bills that the city has to pay in any of its departments?

A. Yes, sir.

Q. Suppose you have to repair one of your—say the pilot-house of this boat, how is that paid?

A. That is paid upon a bill of the party who makes the repairs. That bill is—a copy is filed in the fire department headquarters, it is audited by the board of fire commissioners, and then transmitted to the finance department for payment.

95 Q. And in that way it is paid?

A. Yes.

Q. And that is the regular course in which all your bills and payments are made?

A. Yes, sir; except, as I said before, as to matters for the relief fund.

Respondents rest.

Counsel for libelant offers in evidence the following extract from the official Government tide table:

"On Sunday, June 11, 1893, it was high water in the forenoon at 5.12; in the afternoon at 5.42, at Governor's island."

That opposite this prediction is the word-, "Average tide currents medium."

ALISON BRIGGS, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. PUTNAM:

Q. You have been engaged in this harbor for how many years as tugboat captain?

A. As captain, thirty-three years.

Q. Have you, besides the command of ordinary tugboats, commanded boats for the city?

A. Yes, sir.

Q. For what department?

A. The department of charities and correction.

Q. During the time that you have been in command of tugboats,

are you familiar with the tides in the East river, and particularly in the location about piers 48 and 49 in the East river?

A. Yes, sir.

Q. Have you had occasion to land vessels at pier 48 and 49?

A. Yes, sir.

Q. Recently?

A. At 48 within a month.

Q. You have had occasion of course to observe the tides in the East river?

A. Yes, sir.

Q. What is the best time in the tide for landing vessels at those piers?

A. High-water slack considered the best.

96 Q. And how long does the tide run up in an eastward current after it is high water by the tide tables, usually?

A. With no wind, about an hour and a quarter; thereabouts.

Q. How would the tide be at piers 48 and 49 an hour before high water, or about that?

A. It would be strong flood tide.

Q. Are you familiar with the construction of piers 48 and 49, as to the crib at the end?

A. Very well; yes, sir.

Q. About how long a solid crib is there at the end of the piers?

A. I should think from 30 to 40 feet; I don't know exactly.

Q. Inside of that how is the pier supported?

A. By piling.

Q. How is the tide about the cribs?

A. On the flood tide the crib will form an eddy.

Q. How is it inside of the crib and between the crib and the bulkhead?

A. On the strength of the flood tide or half tide the tide will be running up through.

Q. That is from 48 to 49?

A. Yes, sir.

Q. How does it compare inside the crib with outside the crib?

A. It doesn't run so strong.

Q. But it would still run up, would it?

A. Slightly, yes, sir.

Q. Is it ever necessary, in your experience, with a heavy boat to go in there rung at full speed in between those piers?

Objected to, that the conditions must be known which existed there at the time when the boat went in before the witness can say it is necessary.

The COURT: Give him the statement of the vessels as stated by the witnesses.

Q. Do you know the fireboat *New Yorker*?

A. Yes, sir.

Q. Seen her a great many times, haven't you?

A. Yes, sir.

Q. She is a heavy boat as distinguished from a light boat?

A. Considered so, yes, sir; I have not been on board of her.

97 Q. Suppose that a boat like the *New Yorker* enters between piers 48 and 49 an hour before high water, and there are vessels on both sides of the slip, and the tide is running up flood outside of the crib, and the vessel has swung around and heads to pass in between piers 48 and 49, what is the prudent way among seamen to take such a vessel safely in?

A. A vessel of her size and weight I should deem it safe to land on pier 49 and get a line out and work around.

Q. And warp in?

A. Yes, sir.

Q. Suppose you didn't do that, would it be prudent and safe to go in ringing her up at full speed to take her by 49 or the vessels at the edge of pier 49?

A. Would I deem it safe? Not to keep her hooked up for any length of time.

Q. When you pass between the cribs and get to the water that runs under the piles, what would the current be at that stage an hour before high water?

A. There ought not to be much current in the slip an hour before high water.

Q. You say you have brought vessels to pier 49 within a month?

A. Not 49, 48. But I have put steamers into 49, one steamer.

Q. How large a steamer?

A. A steamer called the *Hartmann*, I should judge five or six hundred tons.

Q. Much larger than any of these fireboats?

A. Oh, yes, sir.

Q. Suppose that a vessel entering at that stage of the tide has the way off her altogether, which way would she drift between piers 48 and 49 after she has come between the crib?

A. I shouldn't think there would be much current at that stage of the tide, it being so near slack water.

Q. But whatever current there was would drift towards which pier?

A. I should think towards 49—I should think so. The winds govern the tide considerably there in that location.

Q. Suppose the wind was very light from the eastward and it was a fine day, would that affect the tide materially?

A. I think not.

98 Cross-examined by counsel for respondents.

By Mr. WARD:

Q. Do you know how much open water there is between piers 48 and 49?

A. I should think 250 feet; I should think so; I don't know, understand.

Q. Is it on that assumption that your testimony has been based, that there is 250 feet of open water between the two piers?

A. No; I should say between those two piers there will probably be 125 feet.

Q. It is on that assumption that your testimony has been based?

A. And my knowledge of the place; yes, sir.

Q. In testifying you have assumed there was that amount of open water between, 125. Is that the fact?

A. Yes, sir.

Q. When you speak of the solid crib-work under pies 49, is there the same thing under pier 48, solid crib-work at the end of it?

A. I think there is; yes, sir.

Q. That extends in both piers, you think, 20 or 30 feet back?

A. Somewheres along there; I don't know the exact measurement.

Q. Isn't it the fact that, with the tide running strong, the effect of that solid mason-work with open piling back would be to make a very strong current through the open space between the spiles?

A. No, sir.

Q. Do you know whether there is any eddy in there between piers 48 and 49?

A. Yes, sir.

Q. There is an eddy?

A. Yes, sir.

Q. Strong?

A. That is owing to how strong the tide is running outside.

Q. Take the tide running flood, is there a strong eddy?

A. If the tide is running strong outside.

By the COURT:

Q. Which way does the current run?

A. Towards this abutment, this crib-work as you call it; as the tide goes up past it forms an eddy behind that.

Q. Which way does the current of the eddy run?

A. Runs down.

99 By Mr. WARD:

Q. Runs against the tide?

A. Not against the tide, but runs in the opposite direction.

Q. Where did you land at pier 48, on which side of the pier, between 48 and 47 or 48 and 49?

A. 47 and 48 the last time I was in there.

Q. When you were there before that?

A. I am in there often, you know, with vessels.

Q. Assuming that there was a railroad float about 40 feet wide at the end of pier 49, and that there was a schooner about 30 feet wide at the end of pier 48—reducing the open water in the slip by about 70 feet—and you had to get in there, and get in there in a hurry, as the fireboats do, do you think it would be careless navigation under those circumstances to go in at such speed as would enable you to avoid the danger of collision with the railroad float at the end of 48?

A. Would I consider it dangerous? I would, yes, sir—with a

boat of her weight, understand. You are speaking of the *New Yorker?* Yes, sir.

Q. Your idea is in that case the safe way of getting in would be to stop and warp in?

A. Yes, sir; we call it getting a spring-line out; of course it would answer the same.

Q. Would the fact that the fireboat was called there to put out a conflagration, the conflagration was actually blazing, alter your views as to the way of getting in?

A. I don't think that materially alters the safety of navigation there.

Q. Then if you were in command of the *New Yorker* you would stop and warp in?

A. I should consider that the safest to do.

By the COURT:

Q. How much longer would it take to go in by the warp than it would without one?

—. I think you could go in just about as soon.

By Mr. WARD:

100 Q. You think you could warp in as soon as you could go in full speed?

A. In many circumstances, in that particular instance, because if you warp in and get the boat straight you can go straight ahead, but when you go full speed you have to stop and back unless your boat is small enough to turn and go straight up the slip.

Counsel for respondents offer in evidence the appointment of Ernest F. Schramm, as a fireman of the third grade, in the fire department.

It is marked Respondents' Exhibit G.

Counsel hereupon sum up the case:

Mr. Ward, for respondents.

Mr. Putnam, for libellant.

101 RESPONDENTS' EXHIBIT B.

Headquarters fire department, city of New York.

WEDNESDAY, *August 20th*, 1890.

The board of commissioners met this day.

Present: President Henry D. Purroy in the chair, and Commissioners S. Howland Robbins and Anthony Eickhoff.

Communications were received and on motion disposed of as follows:

From the civil service examining board certifying names of officers and men eligible for promotion to the position of foreman and assistant foreman.

Filed and ordered that the promotions ordered on the 2d ultimo, subject to examination, be confirmed, to take effect on the 22d instant, as follows:

Assistant Foreman Patrick F. Ryan and

* * * * * * *

to be foremen at a salary of $1,800 per annum.

On motion the board then adjourned.

(Signed) CARL JUSSEN, *Secretary.*

A true extract from the minutes.

JOHN R. SHIELDS,
Assistant Secretary.

(Here follows diagram marked p. 101*a*.)

102 R'SP'D'TS' EX. D.

Headquarters fire department, city of New York.

WEDNESDAY, *February 18th*, 1891.

The board of commissioners met this day.

Present: Commissioners S. Howland Robbins and Authony Eickhoff.

Appointments.

The president *pro tem.* reported the appointment of the following ununiformed firemen as fireman of the 3rd grade, to take effect from the 16th instant, with salary at the rate of $1,000 per annum, which was approved:

* * * * * * *

James A. Gallagher.

* * * * * * *

On motion the board then adjourned.

(Signed) CARL JUSSEN, *Secretary.*

A true extract from the minutes.

JOHN R. SHIELDS,
Assistant Secretary.

R'SP'TS' EX. E.

Headquarters fire department, bureau chief of department, 157 & 159 East 67th street.

NEW YORK, *June 30th*, 1891.

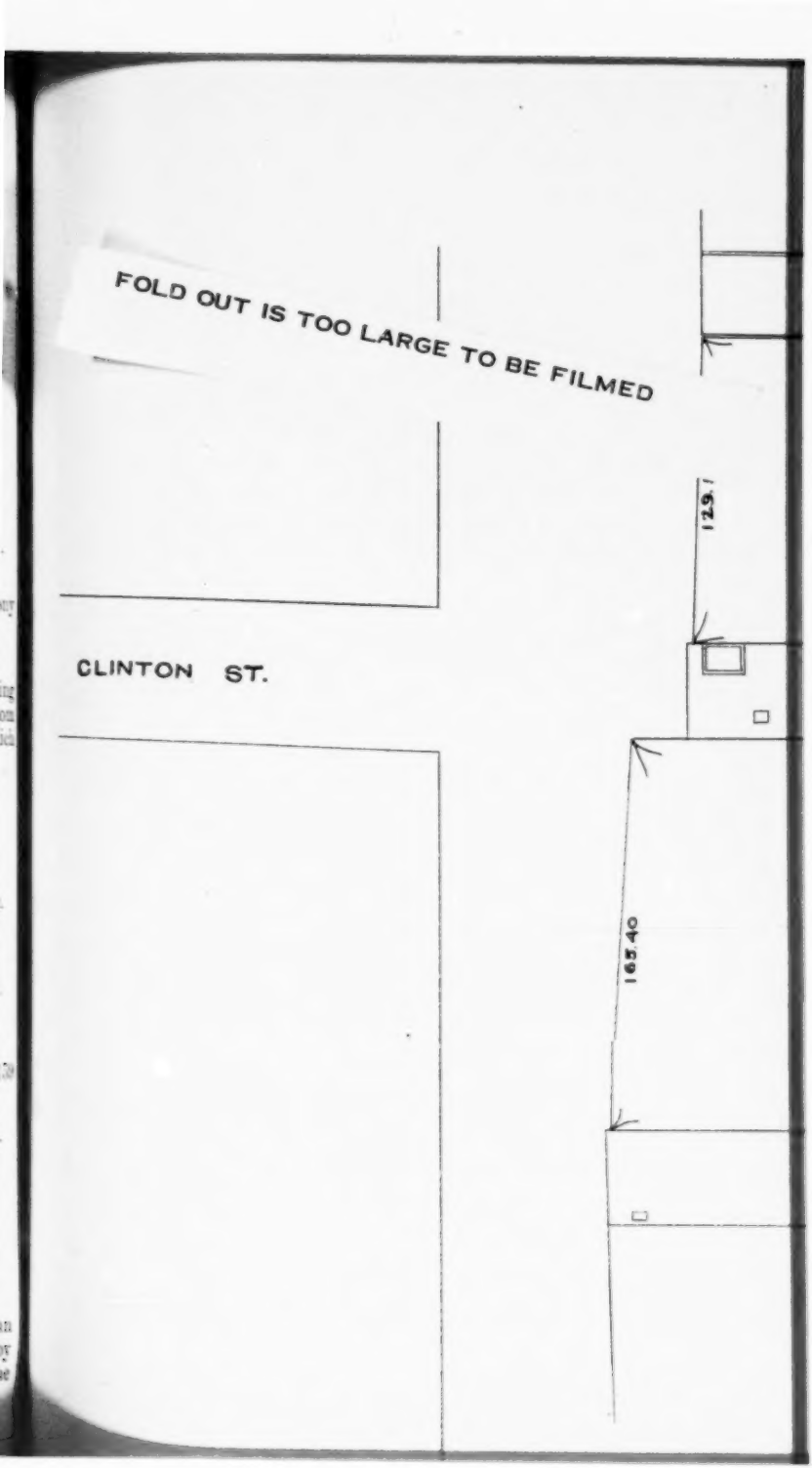
Hugh Bonner, chief of department.

Special Orders.

Copy.

No. 46.

1. Fireman 1st grade, John McCarthy, No. 3, and fireman
103 3d grade, James A. Gallagher, of engine Co. No. 57, are hereby detailed as pilots on the fireboat the *New Yorker*, and the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CLINTON ST.
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provisions of sections 264 and 265 of article VI, rules and regulations, will apply to the uniformed pilots.

By order of—

(Signed) HUGH BONNER,
Chief of Department.

Fire department, city of New York, April 7th, 1894.

A true copy.

[SEAL.] JOHN R. SHIELDS,
Ass't Secretary.

R'SP'D'TS' EX. F.

Headquarters fire department, city of New York.

WEDNESDAY, *October 5th*, 1887.

The board of fire commissioners met this day.

Present: President Henry D. Purroy and Commissioner Richard Croker.

* * * * * * *

Resolved, That fireman 3d grade, Frederick Thompson, of H. & L. Co. No. 3, be and is hereby appointed to the position of engineer of steamer, to take effect from the 8th inst., and assigned to engine Co. No. 43.

* * * * * * *

On motion the board then adjourned.

(Signed) CARL JUSSEN, *Secretary.*

A true extract from the minutes.

JOHN R. SHIELDS,
Assistant Secretary.

104 R'SP'D'TS' EXHIBIT G.

Headquarters fire department, office board of commissioners.

NEW YORK, *April* 13, 1889.

Special Orders, No. 30. (Extract.)

IV. Fireman 3d grade, Ernest F. Schramm, of engine Co. No. 51, is hereby promoted to be an engineer of steamer in this department, at a salary of fourteen hundred dollars per annum, to take effect from 8 o'clock a. m. on the 15th instant. He will report for duty on that date to the commanding officer of the company in which he is now serving.

By order of the board.

HENRY D. PURROY, *President.*

[SEAL.] (Signed) CARL JUSSEN, *Secretary.*

(On margin:) H'dq'rs fire department, New York, April 10, 1894.

A true copy.

JOHN R. SHIELDS,
Ass't Secretary.

105 United States District Court, Southern District of New York.

ROBERT W. WORKMAN
vs.
THE MAYOR, &c., and THE FIRE DEPARTMENT OF THE CITY OF NEW YORK and JAMES A. GALLAGHER. } Opinion.

In admiralty. Collision.

Wing, Shoudy & Putnam, and Mr. Burlingham, for libellant.
William H. Clark, corporation counsel, and James M. Ward, ass't corporation counsel, for mayor, &c.
William L. Findley, for fire department and Gallagher.

BROWN, *J.*:

In the afternoon of July 11, 1893, a fire broke out on the westerly side of South street, about opposite pier 48, East river. For the purpose of assisting in putting out the fire, the fireboat *New Yorker*, belonging to the mayor, aldermen, &c., made her way into the adjoining slip, and in the haste of the occasion she was run into the bow of the barkentine *Linda Park*, causing the latter considerable damage, for which the above libel was filed.

1. For the respondent it is contended, that a less rigid rule of care is applicable in the urgencies of such an occasion, and that considering the circumstances the collision should not be held to have proceeded from negligence. I have no doubt that some acts which might properly be deemed negligent under ordinary circumstances ought not to be held negligent under the stress
106 of fires. But the same general rule is, I think, nevertheless to be applied as the test of what is due care, viz: the care that a man of ordinary prudence would be reasonably supposed to exercise under like circumstances, if the burning property, and the property damaged, had been his own. Making all such allowances, and looking at the facts from that point of view, I still think, considering that the *Linda Park* was properly moored at the dock, that the fireboat *Havemeyer* was already at work in the slip, and the urgency not being extreme, that the running into the *Linda Park* arose through lack of reasonable prudence, and was unnecessary and negligent.

The fireboat belonged to the city, but was under the control and management of the fire department, the heads of which are appointed by the mayor. It is contended that neither the mayor, aldermen, &c., nor the fire department is legally answerable for these damages; not the mayor, &c., it is said, because though owner, it had no control over the management of the vessel; and its duties were not corporate duties. The fire department, it is said, is not liable, because not a corporation capable of being sued, nor having any funds for the payment of a decree.

2. It is certainly a startling proposition, that all the shipping of this port, foreign and domestic, should be at the mercy of the city fireboats, and liable to be negligently run down and sunk at any

moment, without responsibility for damages. By the *maritime law*, both the vessel and the owner are ordinarily liable for such a marine tort. But if the vessel is in the public service, she is not allowed to be withdrawn therefrom by arrest and sale, for reasons of the public convenience (The *Fidelity*, 16 Blatch., 569); or, if the owner, by whose authority and consent she is navigated, can show any other independent legal principal in control of the navigation, such, for example, as a charterer in possession, then the latter only is personally responsible, on the principle of *respondeat superior*. If the legal principal at the time of the injury was the State, that is, if the vessel was strictly in the service of the State, and in
107 the performance of State duties, the State as sovereign not being suable, there is, perhaps, no redress, except by action against the particular individual in fault, and an appeal to the grace and the moral obligation of the sovereign for compensation by legislative act.

But it is obvious that the fireboat *New Yorker*, at the time she inflicted this injury, was not in the service of the State, nor performing any duty of the State. The extinction of fires is not a duty of the State, nor a work which the State has ever undertaken to perform, as a part of its general governmental functions. The State was certainly not the principal in the navigation of the *New Yorker*. Only the corporation or the fire department, as an independent legal entity, could, therefore, be the principal; and if the fire department is not an independent legal entity capable of being sued, as the defendant contends, then, inasmuch as the city corporation owned the vessel, appointed the heads of the fire department, and put the vessel in their charge to be navigated for this very work, the corporation must be responsible, in the view of the maritime law, as the only legal principal in the case. To absolve itself it must show some other independent legal principal in charge of the navigation. The *F. C. Latrobe*, 28 Fed. Rep., 377.

3. The relations of the city corporation and the fire department to each other and to the State, and their respective rights and obligations, are questions of local municipal law, upon which the decisions of the court of appeals, as the highest tribunal of the State, are binding on the Federal courts. (Detroit *v.* Osborne, 135 U. S., 492; Claiborne *v.* Brooks, 111 U. S., 400, 410.)

The court of appeals has made no adjudication as to the status of the fire department of this city under the consolidation act of 1882, or as to the responsibility of the corporation for the acts or negligence of that department.

108 As respects the general responsibility of municipal corporations for torts, the settled law of this State, since the decision of the court of appeals in Conrad *v.* Trustees of Ithaca (16 N. Y., 158), adopting the opinion of Selden, J., in Weet *v.* Brockport (see note 16 N. Y., 163), is that the conferring of corporate powers, privileges and duties, if accepted and acted upon by the corporation, is a sufficient consideration for the implied agreement to exercise such duties with fidelity, and that "whenever the corporation assumes to exercise its corporate powers, it is bound to see

that due care and caution are used to avoid injury to individuals;" do., p. 172. In all subsequent discussions, the decisions have turned essentially upon the question, whether the work or duties in the execution of which the negligence occurred, were properly *corporate duties*, intended to be imposed by law on the corporation; or whether they were duties of a general governmental nature, appropriate to the State and imposed, not upon the corporation itself, but only upon certain *officers* of the corporation, or a department of the corporation, as an independent agency of the State, as the State might have appointed any other individuals, or board, to perform the same duties.

In the former case, the corporation is held liable; in the latter, not. To the latter class, under the acts prior to 1882, belong the duties of the department of charities and correction, in charge of the poor, the criminal and the insane (Maxmilian *v.* The Mayor, &c., 62 N. Y., 160); those of the police department (Swift *v.* The Mayor, 83 N. Y., 535); those of the board of education (Ham *v.* The Mayor, 70 N. Y., 459); in all which cases the corporation was held not liable. See also N. Y. & B. S. M. *v.* City of Brooklyn, 71 N. Y., 580, and Bieling *v.* City of Brooklyn, 120 N. Y., 105–'6. The doctrine of the first three cases was that the duties there in question were a part of the general governmental functions of the State, such duties as the State was accustomed to provide for, and to enforce, by means of some officers, throughout the State, and in the most retired townships, "such duties as are to be performed in every political
109 division of the State, not for its peculiar benefit, but for the public" at large (per Folger, J., in Maxmilian *v.* The Mayor, *supra*, p. 168), and that when the duties are of such a nature, and by the acts in question are "*not laid* upon the *corporate body*," and do not enure to its peculiar benefit, profit or advantage, the imposing of such duties on individual *officers*, or a department of the corporation, is not to be construed as imposing any new duties or liabilities upon the corporation itself, and therefore does not make the corporation legally responsible as principal.

On the other hand, where the nature of the work and of the duties required by the statute to be performed are not of the above character, but are essentially *local*, in which the municipality has a special interest, as distinguished from the public at large, or where the corporation derives therefrom some emolument, profit or advantage, then the imposition of duties upon officers, or a department of the corporation, though not expressly laid upon the corporation itself, is construed as intended to create *corporate duties*, to be performed by the corporation through the designated instrumentalities as the agents of the corporation. Bieling *v.* The City of Brooklyn, 120 N. Y., 105–'6. Such has been held to be the nature of the duties of the street department and the park department in the care of the public streets, the bridges and the sewers; of the dock department, as respects the docks, and of the Croton water commissioners, on the introduction of Croton water, in all which cases the city, on similar statutory provisions, has been held liable. See Ehrgott *v.* The Mayor, &c., 96 N. Y., 271, and the cases there cited; Barney Dump-

ing Co. *v.* The Mayor, 40 Fed. Rep., 50; Philadelphia, &c., *v.* The Mayor, 38 Fed. Rep., 159.

Upon the numerous cases cited and the full discussion of the general subject by Earl, J., in Ehrgott *v.* The Mayor, *supra;* by Folger, J., in Maximilian *v.* The Mayor, *supra;* and by Mr. Justice Hunt, in the case of Barnes *v.* District of Columbia (91 U. S., 540),
110 upon a statute in all respects analogous to the N. Y. statutes prior to the act of 1882 (cited by Earl, J., with evident approval), there seems to me no doubt that the present case belongs to the latter class, and that the corporation is liable for the negligence of the fire department, not only from the local nature of the duties of that department, and the special benefits therefrom to the municipality and the advantages to the corporation, but also from the language of the consolidated act itself. (Laws 1882, ch. 410, sec. 27, 34, 123, 193, 424)

The court of appeals, as above mentioned, has not adjudicated this question under the act of 1882. On the contrary, in the most recent reference to the subject that I have found, viz., in the case of The Fire Department *v.* The Atlas S. S. Company (106 N. Y., 566), though that act in some of its relations was there fully considered in the opinion of Earl, J., the question was left undetermined, as immaterial in that case, "whether it (the fire department) acts independently as a distinct entity with corporate powers, within the doctrine of Maxmilian *v.* The Mayor, 62 N. Y., 160, or whether it acts as an *agency of the city representing it*" (p. 577.) This language is of itself a sufficient answer to the respondent's contention that the exemption of the city from liability for the fire department's acts under the existing statute, has been already adjudged by that court.

It further shows that there was present in the mind of the court the language and the views presented by the same experienced judge in his opinion in Ehrgott *v.* The Mayor, *supra*, in which he said that "although this duty (to keep the streets of the city in repair in the annexed district) is to be exclusively performed by the park commissioners, yet it is a duty which they perform *for it* (the city), and it remains responsible for the condition of its streets."

The duties of the fire department are not, I think, within the ruling of Maximilian *v.* The Mayor; they come rather within the other class of cases, such as streets, sewers, &c. Their nature stamps them as essentially local, and mainly of local concern, like the
111 duties relating to sewers, bridges, and streets; and as being of even more distinctly local concern than the streets, bridges, &c., which, in a measure, are for the use and benefit of all the people of the State. There is no benefit that can be affirmed to result to the corporation from the care of the streets, that does not enure more largely and more directly from the extinction of fires.

In the case of Bates *v.* Westborough, 151 Mass., 184, a State whose courts have pushed farthest the doctrine of municipal exemption, Holmes, J., says: "The interest of towns in the *sewers* is so distinct from that of the public at large, that they are held with reason to the ordinary responsibilities of *owners*." This is manifestly equally

true of the instrumentalities used, and of the work done, in extinguishing fires.

Again, the work of the fire department is not in the least of a general governmental nature, enforced in some form throughout the State for the benefit of the public at large. The extinction of fires is not, and never has been, a State function. It has always been done either by volunteer companies, or by such special local organizations as have been formed and authorized to perform this service; or else by local municipalities or boards similarly authorized in particular localities.

Public governmental duties are such as pertain to the administration of general laws for the benefit and protection of the whole public. "Private or corporate powers are those which the city is authorized to execute for its own emolument, and from which it derives special advantage; or for the increased comfort of its citizens or for the well ordering and convenient regulation of particular classes of the business of its inhabitants; but are not exercised in the discharge of those general and recognized duties which are undertaken by the government for the universal benefit." Per Shipman, J., in Hart *v.* Bridgeport, 13 Blatch., p. 293, Fed. Cas. No. 6149. Greenwood *v.* Town of Westport, 60 Fed. Rep., 571–'2. In the case of Jewett *v.* New Haven (38 Com., 389), Chief Jus. Butler says:

"There is no mode by which to determine whether a power
112 or duty is governmental or not, except to inquire whether it *is in its nature such as all well-ordered governments exercise generally for the good of all*, and one whose exercise all citizens have a *right to require* directly, or by municipal agency; and whether it had *ever been assumed or imposed*, as such, by the government of this State, and would have been exercised by the State, if it had not been by the city. Tested by these criteria, the extinguishment of fires is not a public governmental duty."

Nothing could be more apposite to the present case than these observations in the cases last cited.

The extinction of fires is, moreover, not merely for the benefit of the individual owners; but for the immediate pecuniary *benefit of the corporation* as well, whose yearly revenues of $35,000,000 and upwards come mainly from the annual taxation upon improved property, taxation that amounts on the average to about one-sixth of the entire annual value of the property, which is, more or less, directly saved to the city by the extinction of fires. Here, again, the interest and the advantage to the corporation are more special and peculiar than in the care and preservation of the streets.

The whole course of reasoning in Maximilian *v.* The Mayor, *supra*, plainly, as it seems to me, excludes the work of the fire department from the analogy of that case. The extinction and prevention of fires seem peculiarly appropriate to the localities immediately concerned. The usage and past history of fire companies attest it; so that, in the absence of any indication of a contrary intent in the statute of 1882, there seems to me no doubt that the duties as to fires imposed by the act of 1882 on the fire department of the corporation were designed to be made a *duty of the corporation*, to be per-

formed by that department, as the agent of the city, and representing it, as intimated by Earl, J. See also per Bradley, J., in Bieling *v.* City of Brooklyn, 120 N. Y., 106. In this respect the case of Barnes *v.* District of Columbia, 91 U. S., 540, 545, 547, is precisely analogous, and its reasoning convincing. In that case, every
113 argument here adduced to exempt the city from liability seems to me to be fully met and answered. That case has been repeatedly followed, and, says Mr. Justice Harlan, in District of Columbia *v.* Woodbury, 136 U. S., 450, has "never since been questioned." See, also, per Mr. Justice Bradley, in Metropolitan R. R. *v.* District of Col., 132 U. S., 9, and the learned and exhaustive opinion of Judge Townsend in Greenwood *v.* The Town of Westport, 60 Fed. Rep., 560, 572–4.

4. Aside from the above general considerations, however, the intent of the act of 1882, to make the work of the fire department a duty *of the corporation* seems clearly indicated in the very language of the consolidation act (Laws 1882, chap. 410, secs. 27, 34, 424 *et seq.*). Section 27 of that act declares that "for all purposes, the *local administration and government* of the city of New York, shall continue to be in, and *to be performed by the corporation aforesaid*," *i. e.*: The mayor, aldermen, &c. Sec. 29 invests the board of aldermen with certain legislative powers, and sec. 34 provides that there shall be "the following other departments in said city," naming eleven, of which the fire department is one. The powers and duties of these departments, as defined in the other sections of this act, are all "administrative and governmental;" and almost the whole field of municipal duties is distributed among these various departments.

The different provisions of this act are to be construed harmoniously "and so as not to bring them into conflict with each other." Per Earl, J., in N. Y. Fire Department *v.* Atlas S. S. Co., 102 N. Y., 576. When sec. 27, therefore, declares that "for all purposes, the local administration and government shall *be performed by the corporation, it* must mean that every "*local*" administrative and governmental duty found distributed among any of the departments afterwards named in the same act, is intended to be made a corporate duty, "to be performed by the corporation." The only duties that can be excepted from the effect of this provision are such administrative and governmental duties as are not "local,"
114 and even if that exception can properly and consistently with the language of the act be made to include such duties as have been previously recognized as State functions, and enforced as such by the State in one form or another throughout the State, such as the work of the departments of charities and correction, of the police, and of the board of education—duties which in that sense are not "local"—still, it is manifest, that the work and the duties of the fire department, in the inspection and regulation of buildings in the city of New York, in order to prevent fires, as well as its work of extinguishing fires, are not, and never have been of that general nature; but that they are strictly "local," and that consequently by the language of sec. 27, the duties of the fire department

are by the very terms of the act of 1882, "laid upon the corporation," as corporate duties.

The few cases as to the status of the New York fire department cited for the defendant all arose prior to the act of 1882, and under different statutes. O'Meara *v.* Daly, 1 Daly, 425, arose in 1862, when the fire department was a distinct corporation. (The People *v.* Pinckney, 32 N. Y., 377, 389–392.) The case of Woolbridge *v.* The Mayor, &c., 49 How. Prac., 67, arose under the Metropolitan fire department, also a distinct corporation (1 Sweeny, 224). In Terhune *v.* City of Rochester, 88 N. Y., 247, the case was of acts *ultra vires*, and decided on that ground. The Massachusetts cases are no guide here, because the doctrine of municipal responsibility there is essentially different from that of New York.

The intent of the act of 1882 being sufficiently clear from its language to make the work of the New York fire department a *corporate duty*, there is no occasion and no room for the application of principles of legal "construction," such as are appropriate upon *ambiguous or doubtful statutes*, in order to convert that department, which in itself is a mere branch of the corporation, into an independent legal entity, acting as an agency of the State, instead of being an agency of the corporation.

115 The decisions of the court of appeals are clear and uniform, as I understand them, that as soon as it appears that the duties in question "are laid upon the city, or rest upon the corporation," the city is answerable for negligence in performing them. So says Folger, J., in Maxmilian *v.* The Mayor, 62 N. Y., 169. To the same effect are Kennedy *v.* The Mayor, 73 N. Y., 365, 368; Ham *v.* The Mayor, 70 N. Y., 464; Behrberg *v.* The Mayor, 91 N. Y., 142, 145; Ehrgott *v.* The Mayor, 96 N. Y., 272–'5; Bieling *v.* City of Brooklyn, 120 do., 98, 106; The People *v.* Sherwood (per Earl, J.), 129 N. Y., 368.

For these reasons the libelant is entitled to decree against The Mayor, Aldermen, etc., and the defendant Gallagher, with costs.

Dated August 15, 1894.

A. B.

At a stated term of the district court of the United States for the southern district of New York, held in the court-rooms, in the city of New York, on the 28th day of August, 1894.

Present: Honorable Addison Brown, judge.

ROBERT W. WORKMAN
vs.
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK, The Fire Department of the City of New York, and James A. Gallagher, Impleaded.

It having been referred to a commissioner of this court to ascertain the damages sustained by the libelant, and said damages
116 having been agreed upon by the libellant and the respondents, The Mayor, Aldermen and Commonalty of the City of

New York, and James A. Gallagher, at the sum of $690.36, without a reference, now, on motion of Wing, Shoudy & Putnam, proctors for the libellant, it is—

Ordered, adjudged and decreed that the libellant above named recover herein against the respondents, The Mayor, Aldermen and Commonalty of the City of New York and James A. Gallagher the said sum of $690.36 as damages, and the further sum of $48.32, interest thereon from the 23rd day of June, 1893, and the further sum of $77.16, costs as taxed, making in all the sum of $815.84.

And it is further ordered, adjudged and decreed that as between the respondent, The Mayor, Aldermen and Commonalty of the City of New York, and the respondent, James A. Gallagher, said sum of $815.84 so adjudged to the libellant with the accruing interest be paid by the said respondents in equal parts, one-half by each; and that either of said halves, or any part thereof, which the libellant may not be able to collect from or enforce against either of said respondents, be paid by the other of said respondents.

And it is further ordered, adjudged and decreed that as against the respondent, The Fire Department of the City of New York, the libel herein be and the same hereby is dismissed.

And it is further ordered that unless this decree be satisfied or an appeal therefrom be taken within the time and in the manner prescribed by the rules and practice of this court, the libelant have execution to enforce satisfaction hereof.

ADDISON BROWN.

(Endorsed:) Final decree. Filed Aug. 30, 1894.

117 District Court of the United States for the Southern District of New York.

ROBERT W. WORKMAN, Libelant,
against
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE City of New York, The Fire Department of the City of New York, James A. Gallagher, Respondents. } In Admiralty.

GENTLEMEN: Please take notice that The Mayor, Aldermen and Commonalty of the City of New York, respondents in the above-entitled cause, hereby appeal to the next United States circuit court of appeals for the second circuit from so much of the final decree dated herein on the 28th day of August, 1894, and filed in the office of the clerk of the district court for the southern district of New York on the said 28th day of August, 1894, as orders, adjudges and decrees that the libellant recover against the respondents, The Mayor, Aldermen and Commonalty of the City of New York and James A. Gallagher, the sum of $690.36 as damages; and the further sum of $48 32 as interest thereon; and the further sum of $77.16, costs, making in all the sum of $815.84, and from so much of the said decree as further orders, adjudges and decrees, that the

Mayor, Aldermen and Commonalty of the City of New York and the respondent, James A. Gallagher, pay the said sum of $815.84, so adjudged to the libellant with the accruing interest in equal parts, one-half by each, and that either of said halves or any part thereof which the libellant may not be able to collect from or enforce
118 against either of the said respondents be paid by the other of said respondents.

Dated New York, September 4, 1894.

Yours, &c., WILLIAM H. CLARK,
Counsel to the Corporation, Proctor for Respondents The Mayor, Aldermen and Commonalty of the City of New York.

To Samuel H. Lyman, Esq., clerk of the United States district court for the southern district of New York.

To Wing, Shoudy & Putnam, Esqs., proctors for libellant, 45 William street, N. Y. city.

(Endorsed:) Notice of appeal of the Mayor, etc. Filed Sept. 6th, 1894.

119 United States Circuit Court of Appeals for the Second Circuit.

ROBERT W. WORKMAN, Libelant and Appellee,
against
THE FIRE DEPARTMENT OF THE CITY OF NEW York and James A. Gallagher, Respondents, and The Mayor, Alderman, and Commonalty of the City of New York, Respondent and Appellant. } In Admiralty.

Assignment of Errors.

The respondent and appellant, The Mayor, Aldermen, and Commonalty of the City of New York, on its appeal referred to in the annexed petition assigns the following as errors:

1. The court below erred in entering the decree of August 28th, 1894, that the libelant and appellee recover the amount of his damage, with interest thereon from the 23d day of June, 1893, together with the sum of $77.16, his costs.

2. The court below erred in entering the decree of August 28, 1894, that the libelant and appellee recover the amount of his damage, with interest thereon from the 23d day of June, 1893, and the sum of $77.16, his costs, as taxed against the respondents, The Mayor, Alderman, and Commonalty of the City of New York and James A. Gallagher.

3. The court below erred in adjudging and decreeing in the
120 decree of August 28th, 1894, that as between the respondents, The Mayor, Aldermen, and Commonalty of the City of New York and James A. Gallagher, the damages so adjudged to the

libelants and appellee with the accruing interest thereon be paid by the said respondents in equal parts, one-half by each, and that either of said halves or any part thereof which the libelant may not be able to collect from or enforce against either of said respondents be paid by the other of said respondents.

4. That the court below erred in entering the decree of August 28th, 1894, that the libelant and appellee recover any sum by way of damage, interest and costs, against the respondent and appellant, The Mayor, Aldermen, and Commonalty of the City of New York.

5. That the court below erred in the determining that there was any fault or negligence on the part of the respondents and appellants, The Mayor, Aldermen, and Commonalty of the City of New York.

6. That the said final decree of the said district court entered on the 28th day of August, 1894, is contrary to law in awarding any sum by way of damage to the libelant as against the respondent and appellant, The Mayor, Aldermen and Commonalty of the City of New York.

7. That the said final decree of the said district court entered on the 28th day of August, 1894, is contrary to the evidence in awarding to the libelant any sum whatever by way of damages.

8. That the said final decree of the said district court, entered on the 28th day of August, 1894, is contrary to the evidence in awarding to the libelant any sum whatever by way of damage as against the respondent and appellant, The Mayor, Aldermen, and Commonalty of the City of New York.

9. That the said final decree of the said district court,
121 entered on the 28th day of August, 1894, is against the weight of the evidence in awarding to the libellant any sum whatever by way of damage.

10. That the said final decree of the said district court, entered on the 28th day of August, 1894, is against the weight of the evidence in awarding to the libellant any sum whatever by way of damage against the respondent and appellant, The Mayor, Aldermen and Commonalty of the City of New York.

11. The said district court erred in holding, as a conclusion of fact, that the respondent and appellant, The Mayor, Aldermen and Commonalty of the City of New York, and the respondent, James A. Gallagher, were both of them in fault.

12. The said district court erred in holding, as a conclusion of law, that either the said Mayor, Aldermen and Commonalty of the City of New York, respondent and appellant, or the respondent, James A. Gallagher, were in fault.

13. The said district court erred in holding as a conclusion of law that there was any liability on the part of the respondent and appellant, The Mayor, Alderman and Commonalty of the City of New York, to the libellant herein.

14. The said district court erred in holding as a matter of law that the libellant was entitled to recover any sum whatever against

the respondent and appellant, The Mayor, Aldermen and Commonalty of the City of New York.

Dated New York, September 12th, 1894.

WILLIAM H. CLARK,
Counsel to the Corporation, Proctor for Respondent and Appellant, The Mayor, Aldermen and Commonalty of the City of New York,
2 Tryon Row, New York City, N. Y.

(Endorsed:) Assignment of error-. Filed Sept. 14, 1894

122 District Court of the United States for the Southern District of New York.

ROBERT W. WORKMAN, Libellant,
against
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE City of New York, The Fire Department of the City of New York, and James A. Gallagher, Respondents. } In Admiralty.

GENTLEMEN: Please take notice, that James A. Gallagher, respondent in the above-entitled cause, hereby appeals to the next United States circuit court of appeals for the second circuit from so much of the final decree, dated herein on the 28th day of August, 1894, and filed in the office of the clerk of the district court for the southern district of New York, on the said 28th day of August, 1894, as orders, adjudges and decrees that the libellant recover against the respondents, The Mayor, Aldermen and Commonalty of the City of New York and James A. Gallagher, the sum of $630.36, as damages, and the further sum of $48.32, as interest thereon, and the further sum of $77.16, costs, making in all the sum of $815.84, and from so much of the said decree as further orders, adjudges and decrees that the Mayor, Aldermen and Commonalty of the City of New York and the respondent, James A. Gallagher, pay the said sum of $815.84 so adjudged to the libelant with the accruing interest in equal parts, one-half by each, and that either of said halves or any part
123 thereof which the libelant may not be able to collect from or enforce against either of the said respondents, be paid by the other of said respondents.

Dated New York, September 4, 1894.

Yours, &c., GEORGE L. STERLING,
Proctor for Respondent James A. Gallagher.

To Samuel H. Lyman, Esq., clerk of the United States district court for the southern district of New York.

To Wing, Shoudy & Putnam, Esqs., proctors for libellant, 45 William street, N. Y. city.

(Endorsed:) Notice of appeal of James A. Gallagher. Filed Sept. 6th, 1894.

124 United States Circuit Court of Appeals for the Second Circuit.

ROBERT W. WORKMAN, Libelant and Appellee, *against* THE MAYOR, ALDERMEN, AND COMMONALTY OF the City of New York, The Fire Department of the City of New York, Respondents, and James A. Gallagher, Respondent and Appellant.	In Admiralty.

Assignment of Errors.

The respondent and appellant, James A. Gallagher, on his appeal referred to in the annexed petition, assigns the following as errors:

1. The court below erred in entering the decree of August 28th, 1894, that the libelant and appellee recover the amount of his damage, with interest thereon from the 23d day of June, 1893, together with the sum of $77.16, his costs.

2. The court below erred in entering the decree of August 28, 1894, that the libelant and appellee recover the amount of his damage, with interest thereon from the 23d day of June, 1893, and the sum of $77.16, his costs as taxed against the respondents, The Mayor, Aldermen, and Commonalty of the City of New York and James A. Gallagher.

3. The court below erred in adjudging and decreeing in
125 the decree of August 28, 1894, that as between the respondents, The Mayor, Aldermen and Commonalty of the City of New York and James A. Gallagher, the damages so adjudged to the libelants and appellee with the accruing interest thereon be paid by the said respondents in equal parts, one-half by each, and that either of said halves or any part thereof which the libelant may not be able to collect from or enforce against either of said respondents be paid by the other of said respondents.

4. That the court below erred in entering the decree of August 28, 1894, that the libelant and appellee recover any sum by way of damage, interest and costs, against the respondent and appellant, James A. Gallagher.

5. That the court below erred in the determining that there was any fault or negligence on the part of the respondent and appellant, James A. Gallagher.

6. That the said final decree of the said district court, entered on the 28th day August, 1894, is contrary to law in awarding any sum by way of damage to the libelant as against the respondent and appellant, James A. Gallagher.

7. That the said final decree of the said district court, entered on the 28th day of August, 1894, is contrary to the evidence in awarding to the libelant any sum whatever by way of damage.

8. That the said final decree of the said district court, entered on the 28th day of August, 1894, is contrary to the evidence in awarding to the libelant any sum whatever by way of damage as against the respondent and appellant, James A. Gallagher.

9. That the said final decree of the said district court, entered on the 28th day of August, 1894, is against the weight of the evidence in awarding to the libelant any sum whatever by way of damage.

126 10. That the said final decree of the said district court, entered on the 28th day of August, 1894, is against the weight of the evidence in awarding to the libelant any sum whatever by way of damage against the respondent and appellant, James A. Gallagher.

11. The said district court erred in holding as a conclusion of fact that the respondent, The Mayor, Aldermen and Commonalty of the City of New York and the respondent and appellant, James A. Gallagher, were both of them in fault.

12. The said district court erred in holding as a conclusion of law that either the said Mayor, Aldermen and Commonalty of the City of New York, respondent, or the respondent and appellant, James A. Gallagher, were in fault.

13. The said district court erred in holding as a conclusion of law that there was any liability on the part of the respondent and appellant, James A. Gallagher, to the libelant herein.

14. The said district court erred in holding as a matter of law that the libelant was entitled to recover any sum whatever against the respondent and appellant, James A. Gallagher.

Dated New York, September 12, 1894.

GEORGE L. STERLING,
Proctor for Respondent and Appellant, James A. Gallagher, No. 2 Tryon Row, N. Y.

JAMES M. WARD, *Of Counsel.*

(Endorsed:) Assignment of errors. Filed Sept. 12, 1894.

127 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

ROBERT W. WORKMAN, Libellant and Appellee,
vs.
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK and JAMES A. GALLAGHER, Impleaded with The Fire Department of the City of New York, Respondents and Appellants.

I, Samuel H. Lyman, clerk of the district court of the United States of America, for the southern district of New York, do hereby certify that the foregoing is a correct transcript of the record of the district court in the above-entitled cause, made up pursuant to rule No. 4 in admiralty of the United States circuit court of appeals, for the second circuit.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the south-
[SEAL.] ern district of New York, this 4th day of October, in the year of our Lord one thousand eight hundred and ninety-

four, and of the independence of the said United States the one hundred and nineteenth.

SAM'L H. LYMAN, *Clerk.*

128 U. S. Circuit Court of Appeals, Second Circuit.

WORKMAN, Appellee,
vs.
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK *et al.*, Appellants. } Opinion.

WALLACE, *C. J.:*

The evidence in the record adequately supports the conclusion of the court below that the injuries caused by the libelant's vessel by the impact of the fireboat were caused by the negligent manner of the fireboat while the latter was trying to reach a convenient location to play upon a burning building near the pier at which the libelant's vessel was moored. The case then presents the legal question whether the municipal corporation, The Mayor, &c., of the City of New York, is responsible for the negligence of the members of its fire department, committed while attempting to extinguish a fire within the corporate limits.

That the suit is brought in a court of admiralty instead of a common-law court, and that the negligence consisted in the improper navigation of the vessel, are considerations which cannot affect the conclusion. Although the vessel may have been the direct instrumentality, the offending thing, in effecting a marine tort, neither the vessel nor her owners can be held responsible by reason of that circumstance alone. The common case of a collision of a vessel in tow of another, and a third vessel, produced by the negligence of the towing vessel, is a sufficient illustration. If the vessel in tow is free from negligence, neither she nor her owner is liable for the injury. Accountability, either personal or on the
129 principle of agency, must concur with injury to give a cause of action in any tribunal, equally in admiralty as at common law. If the city of New York would not have been liable if one of its steam fire-engines, manned by the members of the fire department, had, by want of due care, while endeavoring to reach a conflagration, injured an individual or his property, it cannot be liable in the present suit.

It is familiar law that the officers selected by a municipal corporation to perform a public service for the general welfare of the inhabitants or the community, in which the corporation has no private interest, and from which it derives no special benefit or advantage in its corporate capacity, are not to be regarded as the servants or agents of the municipality, and for their negligence or want of skill in cannot be held liable. This is so, notwithstanding such officers derive their appointment from, and are paid by, the corporation itself. In selecting and employing them the municipality merely performs a political or governmental function; the duties

entrusted to them do not relate to the exercise of corporate powers; and hence they are the agents or servants of the public at large. Upon this principal it has uniformly been decided by the courts that municipal corporations are not liable for the negligence or wrongful acts of the officers of the police or health departments, committed in the course of their ordinary employment. Unless the duties of the officers of the fire department are of a different complexion, and they are the servants of the municipality because they are engaged in performing one of its corporate functions, the same principle must extend immunity to the municipality for the negligent acts of these officers and their subordinates.

A municipal corporation, like a private corporation, is liable to any person who has sustained injury in consequence of its neglect to perform a corporate duty; but because the duties of municipal corporations in respect to protecting its citizens from the dangers of fires are governmental, and not corporate, they are not liable to the owner of property injured by fire, in consequence of their
130 neglect to provide suitable fire apparatus; or to provide and keep in repair public cisterns, or the failure of their firemen to use proper efforts. Wheeler *v.* Cincinnati (19 Ohio St., 19); Batch *v.* Covington (17 B. Mon., 722); Brinkmeyer *v.* Evansville (29 Ind., 187); Waitman *v.* Washington (1 Black, 39, 49); Kies *v.* Erie City (135 Pa. St., 144); Heller *v.* Sedalia (53 Mo., 159); Robinson *v.* Evansville (37 Ind., 334). So uniform and numerous are the authorities against the proposition that a municipal corporation is liable for the negligent acts of these officers that to discuss it as an original question would seem to be inappropriate. In one of the most recent text books on the law of municipal corporations the rule is thus stated: "Municipal corporations are not liable for the negligence of their firemen, although they may be appointed and removed by the city, and the performance of their duties are wholly subject to its control." Tiedeman on Municipal Corporations, sec. 333. A reference to the following adjudicated cases, in which the rule has been applied, will suffice to show how universally it obtains in the courts of this country: Hafford *v.* New Bedford (16 Gray, 297), in which a hose carriage on its way to a fire ran over the plaintiff; Fisher *v.* Boston (104 Mass., 87), in which the injury was caused from the bursting of hose; Burrill *v.* Augusta (78 Maine, 118), in which a horse was frightened by escaping steam from an engine left in the street; Wild *v.* Patterson (47 N. J. Law, 406), in which the injury was caused from a defect in the brake of an engine; Hayes *v.* Oshkosh (33 Wis., 314), in which damage was sustained by the negligent management of an engine in allowing the escape of sparks; Wilcox *v.* The City of Chicago (107 Ill., 334), a case of collision with a hook and ladder wagon; Edgerly *v.* Concord, (59 N. H., 78), a case of the negligent testing of a hydrant; Howard *v.* San Francisco (51 Cal., 52), a case of collision with an engine; McKenna *v.* St. Louis (6 Mo. App., 220), a case of negligent management of hose carriage; Jewett *v.* New Haven (38 Conn., 368), a similar case; Grube *v.* St. Paul (34 Minn., 402), a similar case;
131 Welsh *v.* Rutland (56 Vt., 228), a case of injury of slipping

on ice caused by the escape of water from fire-hydrant; Greenwood *v.* Louisville (13 Bush., 226), in which the plaintiff was negligently run over on the sidewalk by an engine; Freeman *v.* Philadelphia (7 W. N. C. Pa., 45), and Knight *v.* Philadelphia (15 W. N. C. Pa., 307), cases of careless driving of fire-engine; Dodge *v.* Granger (17 R. I., 664), a case of injury by the negligent projection of a ladder from an engine-house; Simon *v.* Atlanta (67 Ga., 618), a case of injury from a rope stretched across the street by the fire department.

It is quite immaterial that the duties of these officers are defined and the offices created by the charter or organic law of the municipality; the test of corporate liability for the acts of the officers of the municipality depends upon the nature of the duties with which they are charged; if these, being for the general good of the public as individual citizens, are governmental, they act for the State, if they are those which primarily and legitimately devolve upon the municipality itself, they are its agents. Thus in Mead *v.* New Haven (40 Conn., 72) the city, pursuant to its charter, appointed an inspector of steam boilers and passed a by-law which imposed a penalty on any person who should use a boiler without having it tested by an inspector. In a suit for the negligent act of the inspector the court said: "The duty of inspection of boilers is governmental. The object of the inspection is to protect all citizens from danger who may come in contact with the boiler, or may be exposed in any way to danger from its unsafe condition. The city, as such, has no pecuniary or individual or private interest in the matter, and although the power of the city over the subject is conferred by the charter, and not by the general law, yet the city must, we think, be regarded as the agent of the government, and acting for the State, and not for itself, in making the appointment of inspectors, and therefore not liable for the inspector's negligence." The fire department of the city of New York derives its origin and defined powers from the same organic law as do the commis-
132 sioners of charities and correction, and the department of public instruction, and the officers of each are constituted by the appointment of executive officers of the city. Of the commissioners of charities and correction the court of appeals said in Maximilian *v.* The Mayor (62 N. Y., 160): "It is seen at once that the powers and duties of the commissioners of charities and correction are not to be exercised and performed for the especial benefit of the defendant. It gets no emolument therefrom nor any good as a corporation. It is the public, or individuals as members of the commonalty, who are interested in the due exercise of these powers, and the proper performance of their duties. * * * These chief officers, though in a sense its officers, as having no power unless after appointment by it, and as mainly confined within its territorial boundaries are yet officers of the State government, in the sense that they perform its functions within a designated political division of the State." Of the department of public instruction the court of appeals said in Ham *v.* The Mayor (70 N. Y., 459): "Although formally constituted a department of the municipal government the

duties which it was required to discharge were not local or corporate, but related and belonged to an important branch of the administrative department of the State government." It was held in each of these cases that the city of New York was not liable for the negligence of an employee of one of these departments. And in Thompson *v.* The Mayor (52 Super. Ct. Rep., 427), it was held that the city was not liable for the negligent conduct of the employees of the fire department, as at present constituted.

We entertain no doubt that the city was not liable for the negligent management of the fireboat in the present case, and that the libel against the mayor, &c., should have been dismissed by the district court.

It is accordingly ordered that the cause be remitted to the district court with instructions to dismiss the libel against the mayor,
133 &c., with costs of this court, and of the district court, and to affirm the decree against the respondent Gallagher with costs.

(Endorsed:) U. S. cir. ct. of appeals, second cir. Workman, appellee, *v.* The Mayor, Aldermen & Commonalty of the City of New York, *et al.*, appellants. Wallace, C. J. Filed April 16, 1895.

At a stated term of the United States circuit court of appeals for the second circuit, held in the court-rooms of said court in the post-office building in the city of New York, on the 6th day of May, 1895.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, judges.

ROBERT W. WORKMAN, Libellant and Appellee,
against
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF New York, James A. Gallagher, Impleaded with the Fire Department of the City of New York, Respondents and Appellants.

This cause having come on to be heard, on appeal by the appellants and respondents, The Mayor, Aldermen and Commonalty of the City of New York and James A. Gallagher, from each and every part of the decree of the district court of the United
134 States for the southern district of New York, entered in the above cause in the clerk's office of the district court of the United States for the southern district of New York on the 28th day of August, 1894, except that portion of said decree which orders and adjudges that as against the respondents in this cause, The Fire Department of the City of New York, the libel herein be dismissed, and after hearing David J. Dean, Esq., advocate for the appellants, in support of the said appeal, and Harrington Putnam, Esq., advocate for the appellee, in opposition thereto, and due delibe... on being had, now, on motion of Francis M. Scott, Esq., proctor for the respondents and appellants, it is—

Ordered that the said decree of the district court for the southern

district of New York be, and the same hereby is, reversed except as regards the provisions thereof relating to the fire department of the city of New York, and as to the appellant, James A. Gallagher, and that as to said James A. Gallagher the decree of said district court is affirmed with costs, and it is—

Further ordered that a mandate issue to the said district court to proceed in accordance with the opinion of this court.

W. J. W.
E. H. L.
N. S.

(Endorsed:) Order for mandate. Filed May 6, 1895.

135 United States Circuit Court of Appeals for the Second Circuit.

ROBERT W. WORKMAN, Libellant and Appellee,
against
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF New York and James A. Gallagher, Respondents and Appellants.

The libellant and appellee in the above cause respectfully petitions and requests this court to certify to the Supreme Court of the United States, for its decision, the following questions:

1. Whether the city of New York is liable for the negligent navigation of a fireboat in respect to a collision with a British vessel, which at the time is moored alongside a wharf within the municipality.

2. Whether the liability of a municipal corporation for a wrongful collision on navigable waters by a city fireboat is to be determined by the municipal law and statutes of the State of New York, or by the principles of the maritime law.

3. Whether the admiralty recognizes any exemption in favor of a municipality owning and operating a vessel upon navigable waters for the purpose of extinguishing fires.

4. Whether the liability of a municipal vessel-owner for negligent collision depends in the admiralty upon the doctrine of *respondeat superior*, or is incidental to ownership, even if the pilot in charge be not the servant of the owner.

136 5. Whether the rules of the State common-law courts, in respect to a trespass by a fire-engine on land, are to be followed by the Federal courts, sitting in admiralty, in determining the liability of a city for maritime torts by a steam fireboat.

6. Whether a State has the power to authorize a municipality to use a steam vessel in navigable waters, and exempt the municipal owner from the liabilities imposed on other vessel-owners?

The appellee and libellant further shows, in support of his application, that these questions are of great importance, and have never been passed upon by the Supreme Court.

That in the learned opinion of this court no decision in the admiralty is cited, and the only Federal case mentioned (Weightman

v. Washington, 1 Black, 39) was an action upon the case at common law in which the plaintiff was successful, by writ of error, in reversing a judgment for the defendant.

In the case of the *China*, 7 Wallace, 68, the Supreme Court said: "The maritime law as to the position and powers of the master and the responsibility of the vessel *is not derived from the civil law of master and servant, nor from the common law.*" * * * "The remedy of the damaged vessel, if confined to the culpable pilot, would frequently be a mere delusion. He would often be unable to respond by payment, especially if the amount recovered were large. Thus, where the injury were greatest, there would be the greatest danger of a failure of justice."

As there is no controversy as to the facts, and the libellant's vessel is admitted to have been blameless, the libellant should be permitted to have the liability of the city determined by the decision of the highest court.

The libellant further shows that similar actions are pending in other districts, and that a question of such importance and far-reaching results should be decided by the Supreme Court; so
137 that thereby the conflicting decisions of different judicial districts may be reduced to a uniform rule in the courts of admiralty.

ROBERT W. WORKMAN,
By WING, SHOUDY & PUTNAM,
Proctors.

Dated April 30th, 1895.

SIRS: Please take notice that we shall present the foregoing petition to the judges of the United States circuit court of appeals for the second circuit, at the court-rooms, in the city of New York, on Monday, May 6th 1895, at 10.30 o'clock a. m., and apply for the certificate prayed for therein, and for such other or further relief in the premises as may be proper.

Dated April 30th, 1895.

WING, SHOUDY & PUTNAM,
Proctors for Petitioner.

To Francis M. Scott, Esq., counsel to the corporation; George L. Sterling, Esq., proctor for Gallagher, respondents and appellants.

Decision on Motion for Certificate.

WORKMAN
vs.
THE MAYOR, &C.

Petition for certification to Supreme Court denied.
May 6, 1895.

138 UNITED STATES OF AMERICA, *Southern District of New York*, } *ss:*

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 137, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Robert W. Workman, libellant, appellee, *v.* The Mayor, Aldermen and Commonalty of the City of New York, and James A. Gallagher, respondents, appellants (impleaded with the Fire Department of the City of New York), as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this tenth day *day* of May, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the said United States the one hundred and nineteeth.

[SEAL.]

[Seal United States Circuit Court of Appeals, Second Circuit.]

JAMES C. REED, *Clerk.*

139 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

Being informed that there is now pending before you a suit in which The Mayor, Aldermen, and Commonalty of the City of New York and James A. Gallagher are appellants and Robert W. Workman is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the district court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States,

140 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of May, in the year of our Lord one thousand eight hundred and ninety-five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

141 [Endorsed:] Supreme Court of the United States. No. 1022, October term, 1894. The Mayor, &c., of the City of New York *et al. vs.* Robert W. Workman. Writ of certiorari.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, by virtue of the foregoing writ of certiorari and in obedience thereto do hereby certify that the following page, numbered four, contains a true and complete transcript of the record and proceedings had in said court in the cause entitled Robert W. Workman, libellant, appellee, against The Mayor, Aldermen, and Commonalty of the City of New York and James A. Gallagher, respondents, appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fifth day of June, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Seal United States Circuit Court of Appeals, Second Circuit.

JAMES C. REED, *Clerk.*

142 United States Circuit Court of Appeals, Second Circuit of New York.

ROBERT W. WORKMAN
against
THE MAYOR, ALDERMAN, AND COMMONALTY OF THE CITY OF NEW YORK and JAMES A. GALLAGHER.

It is hereby stipulated that the record heretofore certified by the clerk of this court to the Supreme Court of the United States, on the application of the libelant for a writ of certiorari, together with this stipulation, stand as the return to the writ issued out of said Supreme Court May 28th, 1895.

Dated New York, May 29, 1895.

WING, SHOUDY & PUTNAM,
Proctors for Libellant.
FRANCIS M. SCOTT,
Proctor for Respondent The Mayor, &c.
GEORGE L. STERLING,
Proctor for Jas. A. Gallagher.

(Endorsed:) United States circuit court of appeals, second circuit. Filed June 5, 1895. James C. Reed, clerk.

143 [Endorsed:] Case No. 15,906. Supreme Court U. S., October term, 1896. Term No., 276. The Mayor, Aldermen, &c., of New York, app'ts, *vs.* Robert W. Workman. Writ of certiorari and return. Filed June 7, 1895.